

What is a CRA Contact?

Proposed § 533.2(b)(2) governs when agreements will not be considered “covered agreements” because they do not involve a CRA contact. The proposed rule text and accompanying preamble give examples of the types of actions that would or would not be CRA contacts under the proposed rule. The preamble to the proposed rule also discusses at 65 Fed. Reg. 31967 two alternatives that would change the scope of the actions that would be considered CRA contacts:

Eligibility Alternative. Under the first alternative discussed in the preamble, a person would not engage in a CRA contact if the person merely discusses with the insured depository institution or affiliate whether particular loans, services, investments, or community activities are generally eligible for consideration by an agency under the CRA regulations. The marketing of products and services to insured depository institutions frequently includes some discussion of eligibility for credit under CRA. Such discussions may be useful for insured depository institutions, and are a commonly accepted business practice. In contrast to the comment/testify alternative, however, a discussion of the potential effect of the loans, services, investments, or activities on a particular institution’s CRA rating or on its applications *would* be a CRA contact under this alternative.

Comment/Testify Alternative. Under the second alternative discussed in the preamble, a person would engage in a CRA contact *only* if the person: (1) provides comments or testimony to a Federal banking agency about the institution’s CRA performance; or (2) discusses or otherwise contacts an insured depository institution or affiliate about providing (or refraining from providing) comments or testimony to a Federal banking agency or comments for a public file about such performance.

The following chart contains examples that demonstrate the operation of the two alternatives, as compared to the proposed rule text:

Circumstances	Is this agreement covered?		
	<i>Proposed Rule</i>	<i>Eligibility Alternative</i>	<i>Comment/Testify Alternative</i>
<p><i>Example 1(a)</i> A non-profit Credit Counseling Service (CCS):</p> <ul style="list-style-type: none"> Enters into a written agreement with insured depository institution (IDI) to provide first-time home buyer counseling to low- and moderate-income residents of the institution's local community. Under the agreement, the institution will pay CCS \$20,000 over 2 years for a maximum of 200 applicants. This counseling would be in fulfillment of CRA. No preceding or concurrent discussion of CRA. 	<p>No. Exempt because even though the agreement was in writing, met the value test, and was in fulfillment of CRA, it did not involve any CRA contact.</p>	<p>No, for the same reasons as the proposed rule.</p>	<p>No, for the same reasons as the proposed rule.</p>
<p><i>Example 1(b)</i> The CCS:</p> <ul style="list-style-type: none"> Approaches the IDI with a letter offering their counseling services. Indicates that such counseling is generally considered a community development service under the CRA regulations. After the letter, enters into a written agreement on the same terms as Example 1(a). 	<p>Probably. The discussion at 65 Fed. Reg. 31967 in the text accompanying and following footnote 9 implies that this would be a CRA contact.</p>	<p>No. There was not a CRA contact because the letter only addressed whether the undertaking would be eligible for CRA consideration.</p>	<p>No. There was not a CRA contact because the letter did not involve either a contact with a federal banking agency OR a discussion with the IDI or affiliate about providing or refraining from providing comments or testimony to an FBA or to a public file about the IDI's CRA performance.</p>

Circumstances	Is this agreement covered?		
	<i>Proposed Rule</i>	<i>Eligibility Alternative</i>	<i>Comment/Testify Alternative</i>
<p><i>Example 1(c)</i> The CCS:</p> <ul style="list-style-type: none"> Approaches the IDI with a letter stating that the CCS has read the IDI's last CRA performance evaluation and noticed that the IDI had performed poorly on community development services in the past. Invites the IDI to work with the CCS to better address its local community's needs. After the letter, enters into a written agreement on the same terms as Example 1(a). 	<p>Yes. The letter would be a CRA contact under proposed § 533.2(b)(ii)(3) or (4).</p>	<p>Yes. A CRA contact occurred when the letter addressed the IDI's CRA performance, not just the undertaking's eligibility for CRA consideration.</p>	<p>No. There was not a CRA contact because the letter did not involve either a contact with a federal banking agency OR a discussion with the IDI or affiliate about providing or refraining from providing comments or testimony to an FBA or to a public file about the IDI's CRA performance.</p>
<p><i>Example 1(d)</i> The CCS</p> <ul style="list-style-type: none"> Not only writes to the IDI commenting on the IDI's past poor performance of community development services in the past and invites the IDI to work with the CCS to better address its local community's needs, but also meets with the IDI, saying that if the IDI does not enter into an agreement with the CCS, the CCS will adversely comment to the IDI's regulator in conjunction with the IDI's next CRA exam. After the letter and meeting, enters into a written agreement on the same terms as Example 1(a). 	<p>Yes. The letter and meeting would be CRA contacts under proposed § 533.2(b)(2)(B)(1), (3), or (4).</p>	<p>Yes. Both the letter and the meeting would be CRA contacts.</p>	<p>Yes. The statement at the meeting would be a CRA contact.</p>

Circumstances	Is this agreement covered?		
	<i>Proposed Rule</i>	<i>Eligibility Alternative</i>	<i>Comment/Testify Alternative</i>
<p><i>Example 2(a)</i> A for-profit mortgage banker (MB):</p> <ul style="list-style-type: none"> • Advertises a portfolio of home loans made to low- and moderate-income borrowers in an offering circular sent to several insured depository institutions. During the course of negotiations with an IDI that responded to the circular, the parties discuss the geographic location of the loans to ensure that the loans are in the IDI’s local community. The mortgage banker and the IDI enter into a written loan purchase agreement under which the IDI will buy \$1,000,000 of loans over a three-year period. These loans would be in fulfillment of CRA. • Neither the offering circular nor the parties’ discussions referred to CRA or the IDI’s CRA performance. 	<p>No, because even though the agreement is in writing, meets the value test, and would be in fulfillment of CRA, no CRA contact preceded the agreement. See proposed § 533.2(b)(iii)(D).</p>	<p>No, for the same reasons as under the proposed rule.</p>	<p>No, for the same reasons as under the proposed rule.</p>

Circumstances	Is this agreement covered?		
	<i>Proposed Rule</i>	<i>Eligibility Alternative</i>	<i>Comment/Testify Alternative</i>
<p><i>Example 2(b)</i> The MB:</p> <ul style="list-style-type: none"> • Sends a cover letter with an offering circular that specifically asserts that the loans are of the type that would receive favorable consideration by the agencies under the CRA. • The letter does not discuss the IDI’s CRA performance. • Following the letter, has discussions and enters into an agreement on the same terms as example 2(a). 	<p>Yes. The letter ‘s specific mention of how the regulators would be likely to view the loans under CRA would make it a CRA contact as discussed in 65 Fed. Reg. 31967 at footnote 9 and the accompanying text.</p>	<p>No. The letter only addresses the loans’ eligibility for CRA consideration.</p>	<p>No. There was not a CRA contact because the letter did not involve either a contact with a federal banking agency OR a discussion with the IDI or affiliate about providing or refraining from providing comments or testimony to an FBA or to a public file about the IDI’s CRA performance.</p>
<p><i>Example 2(c)</i> The MB:</p> <ul style="list-style-type: none"> • Sends a cover letter with an offering circular that specifically asserts that the loans are of the type that would receive favorable consideration by the agencies under the CRA and that the loans are in the IDI’s CRA assessment area. • The letter does not discuss the IDI’s CRA performance. • Following the letter, has discussions and enters into an agreement on the same terms as example 2(a). 	<p>Yes. The letter ‘s specific mention of how the regulators would be likely to view the loans under CRA and that the loans are located in the IDI’s CRA assessment area would make it a CRA contact as discussed in 65 Fed. Reg. 31967 at footnote 9 and the accompanying text.</p>	<p>No. The letter only addresses the loans’ eligibility for CRA consideration.</p>	<p>No. There was not a CRA contact because the letter did not involve either a contact with a federal banking agency OR a discussion with the IDI or affiliate about providing or refraining from providing comments or testimony to an FBA or to a public file about the IDI’s CRA performance.</p>

Circumstances	Is this agreement covered?		
	<i>Proposed Rule</i>	<i>Eligibility Alternative</i>	<i>Comment/Testify Alternative</i>
<p><i>Example 2(d)</i> The MB:</p> <ul style="list-style-type: none"> • Sends a cover letter with an offering circular that not only asserts that the loans are of the type that would receive favorable consideration under CRA, but also indicates that the mortgage broker is sending the circular because the IDI’s last performance assessment was “Satisfactory.” • Following the letter, has discussions and enters into an agreement on the same terms as example 2(a). 	<p>Yes. The letter specifically discussed the IDI’s CRA performance and would be a CRA contact. See proposed § 533.2(b)(ii)(B)(3) or (4).</p>	<p>Yes. The letter specifically discussed the IDI’s CRA performance, not just the loans’ eligibility for CRA consideration.</p>	<p>No. There was not a CRA contact because the letter did not involve either a contact with a federal banking agency OR a discussion with the IDI or affiliate about providing or refraining from providing comments or testimony to an FBA or to a public file about the IDI’s CRA performance.</p>
<p><i>Example 2(e)</i> The MB:</p> <ul style="list-style-type: none"> • Sends a cover letter with the offering circular discussing the IDI’s CRA performance. • During discussions with the IDI, offers to write a letter to the IDI’s regulator explaining why the purchase of the loans should improve the IDI’s CRA rating. • Following the letter and discussions, enters into an agreement on the same terms as example 2(a). 	<p>Yes. Both the letter and the discussion would be CRA contacts. See proposed § 533.2(b)(2)(ii)(B) (1), (3), or (4).</p>	<p>Yes. Both the letter and the discussion would be CRA contacts.</p>	<p>Yes. The discussion would be a CRA contact because it involves an offer to comment to the IDI’s regulator about the IDI’s CRA performance.</p>