CRA Sunshine – Disclosure and Reporting of CRA-Related Agreements

Introduction

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.

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 the *Summary of the Disclosure and Reporting Requirements of the Regulation*, 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.

Definitions

In addition to the definitions described below, §346.11 of the CRA Sunshine Regulations provide other definitions, including ones for "affiliate" and "term of agreement."

"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:
   a. One or more insured depository institutions or affiliates of an insured depository institution; and
   b. One or more NGEPs.
3. The agreement provides for the insured depository institution or any affiliate to:
   a. 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 t$10,000 in any calendar year; or
   b. 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 NGEP 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:
   a. The funds are loaned at rates that are not substantially below market rates; and
   b. 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.

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 NGEP that is a party to the agreement of such designation.

A **"CRA communication"** is any of the following that meet the timing and knowledge requirements of §346.3(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:
   a. 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;
   b. 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
   c. 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 §346.3(c)(1), and examples of actions that are not CRA communication may be found in §346.3(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:
   a. Home-purchase, home-improvement, small business, small farm, community development, and consumer lending, as described in 12 CFR 345.22 of the CRA regulations, including loan purchases, loan commitments, and letters of credit;
   b. Making investments, deposits, or grants, or acquiring membership shares, that have as their primary purpose community development, as described in 12 CFR 345.23 of the CRA regulations;
   c. Delivering retail banking services, as described in 12 CFR 345.24(d) of the CRA regulations;
   d. Providing community development services, as described in 12 CFR 345.24(e) of the CRA regulations;
   e. 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 345.25(c) of the CRA regulations;
   f. In the case of a small insured depository institution, any lending or other activity described in 12 CFR 345.26(a) of the CRA regulations; or
   g. 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 345.27(f) of the CRA regulations.

"Insured Depository Institution" means any bank or savings associations 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.

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.

Disclosure and Reporting of CRA — Related Agreements Examination Objective

To determine whether the institution: 1) is aware of its responsibilities under section 48 of the FDI Act and the implementing CRA Sunshine Regulation; 2) has identified any written agreements that would trigger the section 48 requirements; and 3) discloses covered agreements and files annual reports as required by the regulation.

Examination Procedures[1]

1. Determine whether the institution can appropriately identify any written contract, arrangement, or understanding covered under the CRA Sunshine Regulation.
2. With regard to covered agreements that the institution has identified, determine whether the institution discloses covered agreements to the public and the relevant supervisory agency in a timely manner and files annual reports relating to covered agreements in a timely manner.
3. Require appropriate corrective action.
4. Document findings.

[1] These reflect the interagency examination procedures in their entirety.

Summary of the Disclosure and Reporting Requirements of the Regulation		
Disclosure of Covered Agreements to the Public		
	NGEP	**Insured Depository Institution or Affiliate**
Which agreements must be disclosed to the public?	Covered agreements entered into after 11/12/99	Covered agreements entered into after 11/12/99
When does my duty to disclose a covered agreement to the public begin?	4/1/01	4/1/01
What event triggers my obligation to disclose a covered agreement to a member of the public?	An individual or entity must request you to make a covered agreement available	An individual or entity must request you to make a covered agreement available
How do I disclose a covered agreement to the public?	You must promptly make a copy of the covered agreement available. You may withhold information that is confidential and proprietary under FOIA standards. However, you must disclose certain enumerated items of information identified at §346.6(b)(3).	You must promptly make a copy of the covered agreement available. You may withhold information that is confidential and proprietary under FOIA standards. However, you must disclose certain enumerated items of information identified at §346.6(b)(3). An IDI or affiliate may make an agreement available by placing a copy of the covered agreement in the IDI's CRA public file. The IDI must make the agreement available in accordance with the CRA rule on public files.
When does my duty to disclose a covered agreement to the public end?	Twelve months after the end of the term of the agreement. However, if your agreement terminated before 4/1/01, your obligation to disclose terminates 4/1/02.	Twelve months after the end of the term of the agreement. However, if your agreement terminated before 4/1/01, your obligation to disclose terminates 4/1/02.

Summary of the Disclosure and Reporting Requirements of the Regulation (continued)		
Disclosure of Covered Agreements to the Relevant Supervisory Agency (RSA)		
	NGEP	**Insured Depository Institution or Affiliate**
Which agreements must be disclosed to the RSA?	Covered agreements entered into after 11/12/99	Covered agreements entered into after 11/12/99
When does my duty to disclose a covered agreement to the RSA begin?	4/1/01	4/1/01
When must I disclose a covered agreement to the RSA?	You must disclose your covered agreement to the RSA within 30 days after the RSA requests a copy of the agreement.	You must disclose your covered agreement to the RSA within 60 days of the end of the calendar quarter after the agreement is entered into. However, if your agreement terminated before 4/1/01, you must disclose your agreement to the RSA by 6/30/01.
How do I disclose a covered agreement to the RSA?	You must provide the RSA with a complete copy of the agreement. If you propose the withholding of any information that can be withheld from disclosure under FOIA, you must also provide a public version of the agreement that excludes such information and an explanation justifying the exclusion. The public version must include certain information. *See* §346.6(b)(3).	You must provide the RSA with a complete copy of the agreement. If you propose the withholding of any information that can be withheld from disclosure under FOIA, you must also provide a public version of the agreement that excludes such information and an explanation justifying the exclusion. The public version must include certain information. *See* §346.6(b)(3). Alternatively, you may provide a list of all covered agreements that you entered into during the calendar quarter, and include the information described at §346.6(d)(1). If the RSA requests a copy of an agreement referenced in the list, you must provide a copy of the agreement and a public version (if applicable) within seven calendar days.
When does my duty to disclose a covered agreement to the RSA end?	Twelve months after the end of the term of the agreement. However, if your agreement terminated before 4/1/01, you must make the agreement available to the RSA until 4/1/02.	If you file a list, your obligation to provide a copy of an agreement referenced in the list terminates thirty-six months after the end of the term of the agreement.

Summary of the Disclosure and Reporting Requirements of the Regulation (continued)		
Filing of Annual Reports with the RSA		
	NGEP	**Insured Depository Institution or Affiliate**
Which agreements are subject to annual reporting requirements to the RSA?	Covered agreements entered into on or after 5/12/00	Covered agreements entered into on or after 5/12/00
What periods require an annual report?	You must report for each fiscal year in which you receive or use funds or other resources under the covered agreement. Alternatively, you may file your report on a calendar year basis.	You must report for each fiscal year in which you have any reportable data concerning the covered agreement described in §346.7(e)(1)(iii), (e)(1)(iv) or (e)(1)(vi). Alternatively, you may file your report on a calendar year basis.
When must I file the annual report?	For fiscal years that end after 1/1/01, you must file the report with each RSA within six months after the end of the fiscal year covered by the report. Alternatively, you may, within this six-month period, provide the report to an IDI or affiliate that is a party to the agreement. You must include written instructions requiring the IDI or affiliate to promptly forward the report to the RSA(s). For fiscal years that end between 5/12/00 and 12/31/00, you must file the report with each RSA (or with an IDI or affiliate that is party to the agreement) no later than 6/30/01.	For fiscal years that end after 1/1/01, you must file the report with each RSA within six months after the end of the fiscal year covered by the report. If a NGEP has provided its report to you, you must also file that report with the RSA(s) on behalf of the NGEP within 30 days of receipt. For fiscal years that end between 5/12/00 and 12/31/00, you must file the report with each RSA no later than 6/30/01.
May I file a consolidated annual report?	If you are a party to two or more covered agreements, you may file a single consolidated annual report concerning all the covered agreements.	If you are a party to two or more covered agreements, you may file a single consolidated annual report concerning all the covered agreements. If you and your affiliates are parties to the same covered agreement, you may file a single consolidated annual report relating to the agreement.
What must I include in the annual report?	You must include the information described at §346.7(d).	You must include the information described at §346.7(d).