

Regulation G

Disclosure and Reporting of CRA-Related Agreements (CRA Sunshine Requirements)

Background

Regulation G, Disclosure and Reporting of CRA-Related Agreements, implements the CRA Sunshine Requirements, which were added to the Federal Deposit Insurance Act (FDI Act), as section 48, by section 711 of the Gramm–Leach–Bliley Act (GLBA). The CRA Sunshine Requirements require nongovernmental entities and 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 federal banking agency, and to file annual reports concerning the agreements with the appropriate agency. The Sunshine Requirements—and the interagency regulations implementing them (including the Board’s Regulation G)—do not affect the Community Reinvestment Act of 1977, its implementing regulations, or the agencies’ interpretations or administration of that act or those regulations.

Regulation G identifies the types of written agreements that are covered by the statute (referred to as covered agreements), defines many of the terms used in the statute, describes how the parties to a covered agreement must make the agreement available to the public and to the appropriate agencies, and explains the type of information that must be included in the annual report filed by a party to a covered agreement. However, neither GLBA nor Regulation G gives the Federal Reserve any authority to enforce the provisions of any covered agreement.

Regulation G became effective in April 2001. As described in the regulation (and outlined in the tables at the end of this chapter summarizing the requirements), the disclosure requirements apply to covered agreements entered into after November 12, 1999. The annual reporting requirements apply to covered agreements entered into on or after May 12, 2000.

Applicability

The CRA Sunshine Requirements of Regulation G apply to

- State member banks and their subsidiaries
- Bank holding companies

- Affiliates of bank holding companies, other than banks, savings associations, and subsidiaries of banks and savings associations
- Nongovernmental entities or persons that enter into covered agreements with any entity listed above

Definitions

Selected terms used in Regulation G are defined below; other terms, including “affiliate” and “term of agreement,” are defined in section 207.11 of the regulation.

Covered Agreement

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

- The agreement is in writing.
- The parties to the agreement include
 - One or more insured depository institutions or affiliates of an insured depository institution and
 - One or more NGEPs.
- The agreement provides for the insured depository institution or any affiliate to
 - Provide to one or more individuals or entities (whether or not parties to the agreement) cash payments, grants, or other considerations (except loans) that have an aggregate value of more than \$10,000 in any calendar year or
 - 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.
- The agreement is made pursuant to, or in connection with, the fulfillment of the CRA.
- The agreement is with a NGEP that has had a CRA communication prior to entering into the agreement.

A covered agreement does not include

- Any individual loan that is secured by real estate
- 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

- The funds are loaned at rates that are not substantially below market rates and
- 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 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 Communications

A *CRA communication* is any of the following that meets the timing and knowledge requirements of section 207.3(b) of Regulation G:

- Any written or oral comment or testimony provided to a federal banking agency concerning the adequacy of the CRA performance of the insured depository institution, any affiliated insured depository institution, or any CRA affiliate
- Any written comment submitted to the insured depository institution that discusses the adequacy of its CRA performance and must be included in the institution's CRA public file
- Any discussion or other contact with the insured depository institution or any affiliate about
 - Providing (or refraining from providing) written or oral comments or testimony to any federal banking agency concerning the adequacy of the CRA performance of the insured depository institution, any affiliated insured depository institution, or any CRA affiliate,
 - Providing (or refraining from providing) written comments to the insured depository institution that concern the adequacy of the institution's CRA performance and must be included in the institution's CRA public file, or
 - The adequacy of the CRA performance of the insured depository institution, any affiliated insured depository institution, or any CRA affiliate

Examples of actions that are CRA communications can be found in section 207.3(c)(1), and examples of actions that are not CRA communications can be found in section 207.3(c)(2).

Fulfillment of the CRA

Factors that are in fulfillment of the CRA:

- *Comments to a federal banking agency or included in the 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
- *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 of an affiliate of a party to the agreement:
 - Engaging in home purchase, home improvement, small business, small farm, community development, and consumer lending, as described in section 228.22 of Regulation BB, which implements the CRA, including purchasing loans, making loan commitments, and extending letters of credit
 - Making investments, deposits, or grants or acquiring membership shares that have as their primary purpose community development, as described in section 228.23 of Regulation BB
 - Delivering retail banking services, as described in section 228.24(d) of Regulation BB
 - Providing community development services, as described in section 228.24(e) of Regulation BB
 - In the case of a wholesale or limited purpose insured depository institution, engaging in community development lending, including originating and purchasing loans, making loan commitments, extending letters of credit, making qualified investments, and providing community development services, as described in section 228.25(c) of Regulation BB
 - In the case of a small insured depository institution, engaging in any lending or other activity described in section 228.26(a) of Regulation BB
 - In the case of an insured depository institution that is evaluated on the basis of a strategic plan, fulfilling any element of the strategic plan, as described in section 228.27 of Regulation BB

Insured Depository Institution

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

Nongovernmental Entity or Person

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.

An NGEP does not include

- The U.S. 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

- A federally chartered public corporation that receives federal funds appropriated specifically for that corporation
- An insured depository institution or affiliate of an insured depository institution
- 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

- Each insured depository institution (or subsidiary thereof) that is a party to the covered agreement
- 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
- Any company (other than an insured depository institution or subsidiary thereof) that is a party to the covered agreement

Regulation G

Examination Objectives and Procedures

EXAMINATION OBJECTIVES

To determine whether the institution

- Is aware of its responsibilities under section 48 of the FDI Act and the implementing CRA Sunshine Regulation (Regulation G)
- Has identified any written agreements that would trigger the section 48 requirements
- Discloses covered agreements and files annual reports as required by the regulation

EXAMINATION PROCEDURES

1. Determine whether the institution can appropriately identify any written contract, arrangement, or understanding covered under Regulation G.
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.

Regulation G

Summary of Disclosure and Reporting Requirements

A. Disclosure of Covered Agreements to the Public

Requirement	Nongovernmental Entities and Persons	Insured Depository Institutions (IDIs) and Affiliates
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 that you make a covered agreement available.	An individual or entity must request that you 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 in section 207.6(b)(3) of Regulation G.	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 in section 207.6(b)(3) of Regulation G. 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.

B. Disclosure of Covered Agreements to the Relevant Supervisory Agency (RSA)

Requirement	Nongovernmental Entities and Persons	Insured Depository Institutions (IDIs) and Affiliates
What 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.
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 may 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 section 207.6(b)(3) of Regulation G.	You must provide the RSA with a complete copy of the agreement. If you propose the withholding of any information that may 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 section 207.6(b)(3) of Regulation G. Alternatively, you may provide a list of all covered agreements that you entered into during the calendar quarter and include the information described in section 207.6(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 7 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.	If you provide a list, your obligation to provide a copy of an agreement referenced in the list terminates 36 months after the end of the term of the agreement.

C. Filing of Annual Reports with the Relevant Supervisory Agency (RSA)

Requirement	Nongovernmental Entities and Persons (NGEPs)	Insured Depository Institutions (IDIs) and Affiliates
What agreements are subject to the requirements for annual reporting 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 section 207.7(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 6 months after the end of the fiscal year covered by the report. Alternatively, you may, within this 6-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 after 1/1/01, you must file the report with each RSA within 6 months after the end of the fiscal year covered by the report. If an 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.
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 in section 207.7(d) of Regulation G.	You must include the information described in section 207.7(e) of Regulation G.