

Supporting Statement
Disclosure and Reporting of CRA-Related Agreements
OMB Control No. 1557-0219

A. Justification.

1. *Circumstances that make the collection necessary:*

National banks, Federal savings associations, and their affiliates occasionally enter into agreements with nongovernmental entities or persons (NGEPs) that are related to their Community Reinvestment Act (CRA) responsibilities. Section 48 of the Federal Deposit Insurance Act (FDI Act) requires disclosure of certain of these agreements and imposes reporting requirements on national banks and other insured depository institutions (IDIs), their affiliates, and NGEPs.¹ As mandated by the FDI Act, the OCC, the Federal Deposit Insurance Corporation, and the Federal Reserve Board (hereinafter referred to collectively as the agencies) issued regulations to implement these disclosure and reporting requirements.

Section 48 of the FDI Act applies to written agreements that: (1) are made in fulfillment of the CRA; (2) involve funds or other resources of an IDI or its affiliate with an aggregate value of more than \$10,000 in a year or loans with an aggregate principal value of more than \$50,000 in a year; and (3) are entered into by an IDI or affiliate of an IDI and an NGEP.²

The parties to a covered agreement must make the agreement available to the public and the appropriate agency.³ The parties also must file a report annually with the appropriate agency concerning the disbursement, receipt, and use of funds or other resources under the agreement.⁴

2. *Use of Information:*

Disclosure of covered agreements allows the public and the OCC to determine which insured depository institutions, affiliates, and NGEPs enter into such agreements, as well as the terms of the agreements.

3. *Consideration of the use of improved information technology:*

Each institution is free to use any technology that is reasonable and appropriate for its circumstances.

¹ 12 U.S.C. 1831y.

² 12 U.S.C. 1831y(e).

³ 12 U.S.C. 1831y(a).

⁴ 12 U.S.C. 1831y(b)-(c).

4. Efforts to identify duplication:

CRA Sunshine information does not duplicate information collected elsewhere. 12 CFR 35.7(d)(3), however, provides that the annual report filed by a NGEF may consist of a report prepared for any other purpose.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

This regulation implements the requirements of 12 U.S.C. 1831y and applies regardless of the size of the insured depository institution, affiliate, or NGEF. Twelve U.S.C. 1831y does not permit exemptions based on size. The collections of information in the rule require:

- IDIs or affiliates to notify NGEFs that are parties to certain agreements that these are agreements with a CRA affiliate;
- NGEFs and IDIs and their affiliates to make a copy of a covered agreement available to any individual or entity upon request;
- NGEFs to provide a copy of the covered agreement within 30 days of receiving a request from the relevant supervisory agency;
- Each IDI and affiliate to provide each relevant supervisory agency with a copy of each covered agreement or a list of all covered agreements entered into during the calendar quarter, within 60 days of the end of each calendar quarter;⁵ and
- Annual reporting.

As part of the rulemaking, the OCC sought to reduce the burden of complying with the requirements of this rule wherever possible and consistent with 12 U.S.C. 1831y. The rule permits NGEFs and IDIs and their affiliates to charge reasonable fees not to exceed the cost of copying and mailing the agreement when responding to an individual or entity's request for a copy of a covered agreement. The rule permits IDIs and affiliates to make covered agreements available to the public by placing copies of covered agreements in the IDI's CRA public file.⁶ The rule also permits IDIs and their affiliates to submit to the relevant supervisory agencies a list of covered agreements entered into within the last calendar quarter rather than copies of each covered agreement. Finally, the rule permits joint filing of the quarterly disclosures in the event that two or more IDIs or affiliates are parties to a covered agreement. Other alternatives were considered as part of the rulemaking, including more or less frequent reporting. However, this notice and access allows the OCC to monitor compliance with the disclosure and reporting requirements of 12 U.S.C. 1831y and respond to requests from the public related to covered agreements. The rulemaking sought to streamline agency disclosure obligations imposed on IDIs and affiliates in a manner consistent with these principles.

The rule reduces the burden of annual reporting by permitting NGEFs to use or incorporate other reports to meet the annual reporting requirement, provided that the

⁵ If providing a list of covered agreements, the IDI or affiliate must provide a copy and public version of any agreement referenced in the list to any relevant supervisory agency within seven calendar days of receiving a request from the agency.

⁶ A CRA public file is the public file maintained by an IDI and described in 12 CFR 25.43.

annual report filed contains all the required information. An NGEF that is a party to two or more covered agreements may file a consolidated annual report. IDIs and affiliates may also file consolidated annual reports.

6. *Consequences to the Federal Program if the collections were conducted less frequently:*

Less frequent collection would be in violation of a Federal statute.

7. *Special Circumstances necessitating collection inconsistent with 5 CFR part 1320:*

None.

8. *Efforts to consult with persons outside the agency:*

On March 9, 2016, the OCC issued a 60-day notice soliciting comment on this information collection, 81 FR 12565. The OCC received one comment from an individual.

The commenter stated that the collection is necessary and has practical utility. The commenter suggested that the OCC amend 12 CFR 35.6 to require that national banks and Federal savings associations publish covered agreements on their Web sites and that the OCC post them on its Web site as well. The CRA Sunshine statute set forth in section 48 of the FDI Act requires that the Federal banking agencies' CRA Sunshine regulations protect proprietary and confidential information of parties.⁷ In order to comply with that statutory requirement, the OCC will make covered agreements and annual reports available to the public in accordance with the Freedom of Information Act (FOIA)⁸ and the OCC's rules regarding the availability of information under the FOIA.⁹

The commenter believed that the burden estimates may be low as institutions may not be aware of the filing requirements in § 35.6(d). The commenter requested that the OCC discuss how the estimates were derived and whether the possibility of underreporting was factored into the estimates. The estimates were obtained by counting the number of actual filings received. Failure to report due to a lack of awareness of the filing requirements in § 35.6 was not considered as this is not within the scope of the PRA.

9. *Payment to Respondents.*

None.

10. *Confidentiality:*

⁷ 12 USC 1831y(h)(2)(A).

⁸ 5 U.S.C. 552 et seq.

⁹ 12 CFR part 4, subpart b; see 12 CFR 35.8.

The statute provides that an agreement “shall be in its entirety fully disclosed.” 12 U.S.C. 1831y(a)(1). It also provides that in carrying out their responsibilities to prescribe regulations, “each appropriate Federal banking agency shall ... ensure ... that proprietary and confidential information is protected.” 12 U.S.C. 1831y(h)(2)(A).

The OCC’s regulations provide that covered agreements will be made available to the public in accordance with the Freedom of Information Act (FOIA) and implementing regulations. (See 12 CFR 35.8) The OCC’s regulations also provide that a party to a covered agreement may request confidential treatment of proprietary and confidential information under those procedures.

11. Justification for questions of a sensitive nature:

Not applicable.

12. Burden estimate:

Section No.	Requirement	Number of Respondents	Total Number Of Responses	Estimated Response Time	Estimated Annual Burden Hours
35.4(b) <i>Disclosure</i>	IDI notification to NGEF that it is party to CRA agreement	10	293	1	293
35.6(b) <i>Disclosure</i>	NGEP and IDI make copy of covered agreements available	14	677	1	677
35.6(c) <i>Disclosure</i>	NGEP discloses covered agreements to OCC	0	0	0	0
35.6(d) <i>Disclosure</i>	IDI provides to OCC copy of agreement or list of covered agreements:	10			
	List of Agreements		10	1	10
	Copies of Agreements		10	1	10
35.7(b) <i>Reporting</i>	NGEP and IDI file annual report with OCC:				
	Annual reports filed by IDIs		6	4	24
	Annual Reports filed by NGEFs		3	4	12
35.7(f) <i>Reporting</i>	IDI receives alternative version of annual report from NGEF and files report with OCC	0	0	0	0

Totals		14			1,026
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Number of IDIs that reported that they were party to Agreements and Number of Agreements: 10 and 293.

NGEPs that reported that they were party to an Agreement and Number of Agreements: 4 and 384.

Number of Annual Reports Filed with OCC: 9.

Total Number of Agreements reported by IDIs and NGEPs (may include some overlap): 677.

Cost of Hour Burden

1,016 Hours x \$101 = \$102,616

To estimate average hourly wages we reviewed data from May 2015 for wages (by industry and occupation) from the U.S. Bureau of Labor Statistics (BLS) for depository credit intermediation (NAICS 522100). To estimate compensation costs associated with the rule, we use \$101 per hour, which is based on the average of the 90th percentile for seven occupations adjusted for inflation (2 percent), plus an additional 30 percent to cover private sector benefits. Thirty percent represents the average private sector costs of employee benefits.

13. Estimate of annualized costs to respondents:

Not applicable.

14. Estimate of annualized cost to the Federal Government:

Not applicable.

15. Changes in burden:

Current burden: 800 hours.

Proposed burden: 1,026 hours.

Difference: + 226 hours.

The increase in burden is due to the increase in the number of agreements.

16. Information regarding collections whose results are planned to be published for statistical use:

Not applicable.

17. Display of Expiration Date:

Not applicable.

18. *Exceptions to the certification statement:*

None.

B. Collections of Information Employing Statistical Methods.

Not applicable.