

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 related reporting requirements on insured depository institutions (IDIs), their affiliates, and NGEPs.¹ As mandated by the FDI Act, the OCC, the Federal Deposit Insurance Corporation, and the Board of Governors of the Federal Reserve System (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 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 year²; and (3) are entered into by an IDI or affiliate and an NGEP.³

Under section 48, the parties to a covered agreement must make the agreement available to the public and the appropriate agency.⁴ This section also requires the parties to file a report annually with the appropriate agency concerning the disbursement, receipt, and use of funds or other resources under the agreement.⁵ The collections of information in the OCC's regulation at 12 CFR part 35 (CRA Sunshine regulation) implement these statutorily mandated disclosure and reporting requirements.

2. *Use of Information:*

Disclosure of covered agreements allows the public and the OCC to determine which IDIs, 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 The definition includes groups of substantially related agreements that satisfy these amounts in the aggregate.

³ 12 U.S.C. 1831y(e).

⁴ 12 U.S.C. 1831y(a).

⁵ 12 U.S.C. 1831y(b)-(c).

4. Efforts to identify duplication:

The CRA Sunshine regulation information does not duplicate information collected elsewhere. Twelve CFR 35.7(d)(3), however, provides that the annual report filed by a NGEF may consist of or incorporate 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 IDI, 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 or 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;⁶ 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.⁷ 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, the required 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.

⁶ 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.

⁷ A CRA public file is the public file maintained by an IDI and described in 12 CFR 25.43.

The rule reduces the burden of annual reporting by permitting NGEPs to use or incorporate other reports to meet the annual reporting requirement, provided that the 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 29, 2019, the OCC issued a notice for 60-day of comment concerning this collection, 84 FR 12032. The OCC received one comment from a trade association. The commenter first urged a repeal of section 48 of the FDI Act (12 U.S.C. 1831y), arguing that the statute imposes a burdensome and costly reporting regime that inhibits IDIs interested in working with NGEFs. The commenter cited a Federal Financial Institutions Examination Council (FFIEC) report to Congress, which stated that section 48's reporting requirements are unduly burdensome.⁸ The commenter also noted that examination teams rarely request information related to covered agreements, despite the resources required to properly report them.

The commenter also requested two revisions to the OCC's regulation. First, the commenter requested that the OCC eliminate the quarterly reporting requirement, which the commenter believes is more burdensome than the annual reporting required by the statute. The commenter stated that the FFIEC had considered eliminating the quarterly reporting requirement, citing the same FFIEC report to Congress. Second, the commenter recommended that the OCC limit the regulation's applicability to legally binding, written contracts, rather than applying it to agreements that reflect a mutual understanding and some oral communications. The commenter argued that the existing approach increases burden and obstructs activity in low- and moderate-income communities.

The OCC appreciates the information provided by the commenter. However, to the extent the commenter disagrees with the scope or requirements of section 48 or the OCC's implementing regulation, the OCC cannot repeal the statute, nor can it revise the regulation through the PRA renewal process.

⁸ FFIEC *Joint Report to Congress: Economic Growth and Regulatory Paperwork Reduction Act*, 53-54, available at <https://www.occ.gov/news-issuances/news-releases/2017/nr-ia-2017-33a.pdf>.

9. *Payment to Respondents.*

None.

10. *Confidentiality:*

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 and that they may withhold from public disclosure confidential or proprietary information in a covered agreement.

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	7	186	1	186
35.6(b) <i>Disclosure</i>	NGEP and IDI make copy of covered agreements available	13	237	1	237
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:	7			
	List of Agreements		14	1	14
	Copies of Agreements		54	1	54
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		13			527

Number of IDIs that reported that they were party to Agreements and Number of Agreements: 7 and 186.

NGEPs that reported that they were party to an Agreement and Number of Agreements: 6 and 51.

Number of Annual Reports Filed with OCC: 9.

Cost of Hour Burden

527 Hours x \$114 = \$60,078,

To estimate wages we reviewed May 2018 data for wages (by industry and occupation) from the U.S. Bureau of Labor Statistics (BLS) for credit intermediation and related

activities excluding nondepository credit intermediaries (NAICS 5220A1). To estimate compensation costs associated with the rule, we use \$114 per hour, which is based on the average of the 90th percentile for nine occupations adjusted for inflation (2.8 percent as of Q1 2019 according to the BLS), plus an additional 33.2 percent for benefits (based on the percent of total compensation allocated to benefits as of Q4 2018 for NAICS 522: credit intermediation and related activities).

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: 1,026 hours.

Proposed burden: 527 hours.

Difference: - 499 hours.

The decrease in burden is due to the decrease 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.