

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

Section 48 of the FDI Act generally 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 covered agreement available to the public and the appropriate Federal banking agency.⁴ This section also requires the parties to file a report annually with the appropriate Federal banking agency concerning the disbursement, receipt, and use of funds or other resources under the agreement.⁵

As mandated by the FDI Act, the OCC, the Federal Deposit Insurance Corporation, and the Board of Governors of the Federal Reserve System issued regulations to implement section 48. The OCC's regulation, codified at 12 CFR 35, is known as the "CRA Sunshine" regulation. The disclosure and reporting provisions of this regulation, which are collections of information under the PRA, implement the 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.

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). The statutory definition of "agreement" excludes any agreement entered into with an NGEP "who has not commented on, testified about, or discussed with the institution, or otherwise contacted the institution, concerning the [CRA]." *Id.*

⁴ 12 U.S.C. 1831y(a).

⁵ 12 U.S.C. 1831y(b)-(c).

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.

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 each NGEF that is a party to covered agreements that the agreement concerns a CRA affiliate;
- NGEFs and IDIs or 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 a calendar quarter, within 60 days of the end of the calendar quarter;⁶ and
- Annual reporting by NGEFs, IDIs or affiliates concerning the disbursement, receipt, and uses of funds under each covered agreement.

As part of the rulemaking, the OCC sought to reduce the burden of complying with the requirements of this rule where 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. In addition, the rule permits joint filing of the quarterly disclosures if two or more IDIs or affiliates are parties to a covered agreement.

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 also 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.

Alternatives considered as part of the rulemaking include more or less frequent reporting when an IDI or affiliate enters into a covered agreement. However, the required notice and access allow the OCC to monitor compliance with the requirements of 12 U.S.C. 1831y and respond to requests from the public related to covered agreements. Further, the provisions of this rule implement statutory requirements. The rulemaking sought to streamline obligations imposed on IDIs and affiliates in a manner consistent with the statute and these principles.

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

Less frequent collection would be in violation of a Federal statute or impair the OCC's ability to monitor compliance and respond to requests.

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

None.

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

On April 8, 2022, the OCC issued a notice for 60-day of comment concerning this collection, 87 FR 20933. No comments were received.

9. *Payment to Respondents.*

None.

10. *Confidentiality:*

The statute provides that an agreement "shall be in its entirety fully disclosed."⁸ 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."⁹

The OCC's regulations provide that covered agreements and annual reports will be made available to the public in accordance with the Freedom of Information Act (FOIA) and

⁸ 12 U.S.C. 1831y(a)(1).

⁹ 12 U.S.C. 1831y(h)(2)(A).

implementing regulations.¹⁰ The OCC’s regulations also provide that a party to a covered agreement may request confidential treatment of proprietary and confidential information in a covered agreement or annual report under those procedures and that they may withhold from public disclosure confidential or proprietary information in a covered agreement.¹¹

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 or affiliate notification to NGEF that it is party to CRA agreement | 8 | 194 | 1 | 194 |
| 35.6(b) <i>Disclosure</i> | NGEF and IDI or affiliate make copy of covered agreements available | 9 | 252 | 1 | 252 |
| 35.6(c) <i>Disclosure</i> | NGEF discloses covered agreements to OCC | 0 | 0 | 0 | 0 |
| 35.6(d) <i>Disclosure</i> | IDI or affiliate provides to OCC copy of agreement or list of covered agreements: | 8 | | | |
| | List of Agreements | | 14 | 1 | 14 |
| | Copies of Agreements | | 58 | 1 | 58 |
| 35.7(b) <i>Reporting</i> | NGEF and IDI or affiliate file annual report with OCC: | | | | |
| | Annual reports filed by IDIs or affiliates | | 3 | 4 | 12 |
| | Annual Reports filed by NGEFs | | 1 | 4 | 4 |
| 35.7(f) <i>Reporting</i> | IDI or affiliate receives alternative version of annual report from NGEF and files report with OCC | 0 | 0 | 0 | 0 |
| Totals | | 9 | | | 534 |

¹⁰ 12 CFR 35.8.

¹¹ 12 CFR 35.6(b)(2), 35.8.

Number of IDIs that reported that they were party to agreements and the number of Agreements: 8 and 194.

NGEPs that reported that they were party to an agreement and the number of agreements: 1 and 58.

Number of annual reports filed with OCC: 4.

Cost of Hour Burden

534 Hours x \$119.63 = \$63,882.42

To estimate wages the OCC reviewed May 2021 data for wages (by industry and occupation) from the U.S. Bureau of Labor Statistics (BLS) for credit intermediation and related activities (NAICS 5220A1). To estimate compensation costs associated with the rule, the OCC uses \$119.63 per hour, which is based on the average of the 90th percentile for six occupations adjusted for inflation (6.1 percent as of Q1 2022), plus an additional 32.8 percent for benefits (based on the percent of total compensation allocated to benefits as of Q4 2021 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: 527 hours.

Proposed burden: 534 hours.

Difference: +7 hours.

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.