

Shedding Light on Sunshine

Effective April 1, 2001, each party to a Community Reinvestment Act (CRA)-related agreement must fully disclose the agreement and its terms to the public and the appropriate federal banking agency. Effective June 30, 2001, each party to a covered CRA-related agreement must submit an annual report to the appropriate federal banking agency concerning the use of CRA-related money and resources during the year ending December 31, 2000.

These disclosure and annual reporting requirements, known as “CRA Sunshine”, are part of the Gramm-Leach-Bliley Act of 1999. Agreements covered by this reporting requirement must satisfy **all** of the following five conditions:

1. The agreement must be in writing
2. The parties to the agreement are an insured depository institution (IDI) or any of its affiliates and a non-governmental entity or person (NGEP)
3. The agreement must involve funds or other resources of an IDI or af-

filiate 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

4. The agreement is made in fulfillment of the CRA
5. There has been communication between the parties of the agreement concerning the adequacy of the institution’s CRA performance

In addition to these five essential rules, enough other conditions and exceptions exist to warrant actually reading the regulation. Readers are strongly encouraged to visit our website (<http://www.frbsf.org/community/index.html>) to obtain a copy of the regulation. What follows is a brief summary of the regulation.

MUST BE IN WRITING

When assessing whether a CRA-related agreement is a “covered” agreement, the first question to ask is whether or not the agreement is in writing. The regulation states that a written agree-

ment includes contracts, arrangements or understandings—even if they are not legally binding—that are recorded on paper. This could be a document as formal as a contract and as informal as a press release.

IDIs AND NGEPS

The second question to ask is whether the agreement is between an IDI and an NGEP. The regulation’s definition of an IDI as an insured depository institution or any affiliate can cover a holding company all the way down to a non-bank subsidiary. NGEPS are defined as any organization that is not a federal, state, local or tribal government entity. Included in the category of NGEPS are such organizations as Freddie Mac, Fannie Mae and the Home Loan Bank System.

VALUE THRESHOLDS

The third question to ask is whether the loan, grant, payment or other consideration—such as services and in-kind contributions—exceeds the value thresholds set in the regulation. For loans, this value threshold is set at an

aggregate principal amount of \$50,000 over the course of a calendar year. The regulation provides reporting exemptions for individual loans secured by real estate (irrespective of the identity of the borrower or the loan terms) and agreements to make a single loan as long as it is not loaned substantially below market rates and is not used to relend. For grants, payments or other considerations, the value threshold is set at an aggregate amount of more than \$10,000 over the course of a calendar year.

For agreements covering multiple years with a specified payment schedule, the agreement would be covered for its entire term if a scheduled payment or loan exceeds the value threshold in any calendar year. For example, if an IDI made a three-year commitment to provide \$25,000 to an NGEF in increments of \$5,000 the first year, \$5,000 the second year and \$15,000 the third year, the agreement is covered and must be reported for all three years since the third year exceeds the value threshold. If the same commitment did not have a specified payment schedule, the entire value of the agreement would be credited to the first year and the \$25,000 commitment would be treated as if it were a one-year agreement.

FULFILLMENT OF THE CRA

The fourth question to ask is whether the agreement is in fulfillment of the CRA. This can be determined quite easily. If it involves the performance of any activity that is a factor in a CRA exam or in a decision to approve or deny an application, it counts. However, only those activities that are likely to receive favorable consideration from the banking agencies are covered. For example, although the CRA examination process looks at home mortgage lending to low-, moderate-, middle- and upper-income individuals, in most cases, only those loans originated to

low- and moderate-income individuals receive CRA consideration from the agencies.

“Discussing whether or not a certain product or service would receive favorable CRA consideration by the agencies is not considered to be a discussion regarding the adequacy of the institution’s CRA performance.”

CRA COMMUNICATION

The final question to ask is whether or not there was communication between authorized representatives of the IDI and NGEF concerning the adequacy of the institution’s CRA performance. Discussing whether or not a certain product or service would receive favorable CRA consideration by the agencies is not considered to be a discussion regarding the adequacy of the institution’s CRA performance. To be considered a CRA communication, the communication must have occurred prior to the agreement and within certain time frames as follows:

- Oral or written communication with a federal banking agency within three years prior to the agreement, or
- Oral or written communication with an IDI regarding testimony to a federal banking agency or comments in the public file within three years prior to the agreement

That time frame is reduced to one year for oral communication with the IDI regarding the adequacy of their CRA performance.

DISCLOSURE

Once a determination has been made regarding whether an agreement is covered, each party to the agreement must make a copy available to anyone upon request. NGEFs must also make a copy available to federal banking agencies upon request. Within 60 days of the end of each quarter, IDIs must submit either a complete copy of each agreement or a list of all agreements for that quarter to their relevant supervisory agency (RSA). Since the act was signed in November, 1999, this public disclosure requirement applies to covered agreements entered into after November 12, 1999. Public disclosure takes effect on April 1, 2001. The first IDI quarterly report is due to their RSA by June 30, 2001, for covered agreements entered into after November 12, 1999.

ANNUAL REPORT

NGEFs and IDIs are required to submit independent annual reports to their RSA six months after the end of the calendar or fiscal year. NGEFs have the option of submitting their annual report to an IDI, which is then required to submit the report to the RSA within 30 days. An NGEF must file an annual report if it received funds or used funds received under the agreement that year. The NGEF annual report must include the following:

- Name and address of the NGEF
- Information sufficient to identify the agreement (i.e. parties to the agreement and dates of the agreement)
- Amount of funds or resources received that year

(continued on page 11)



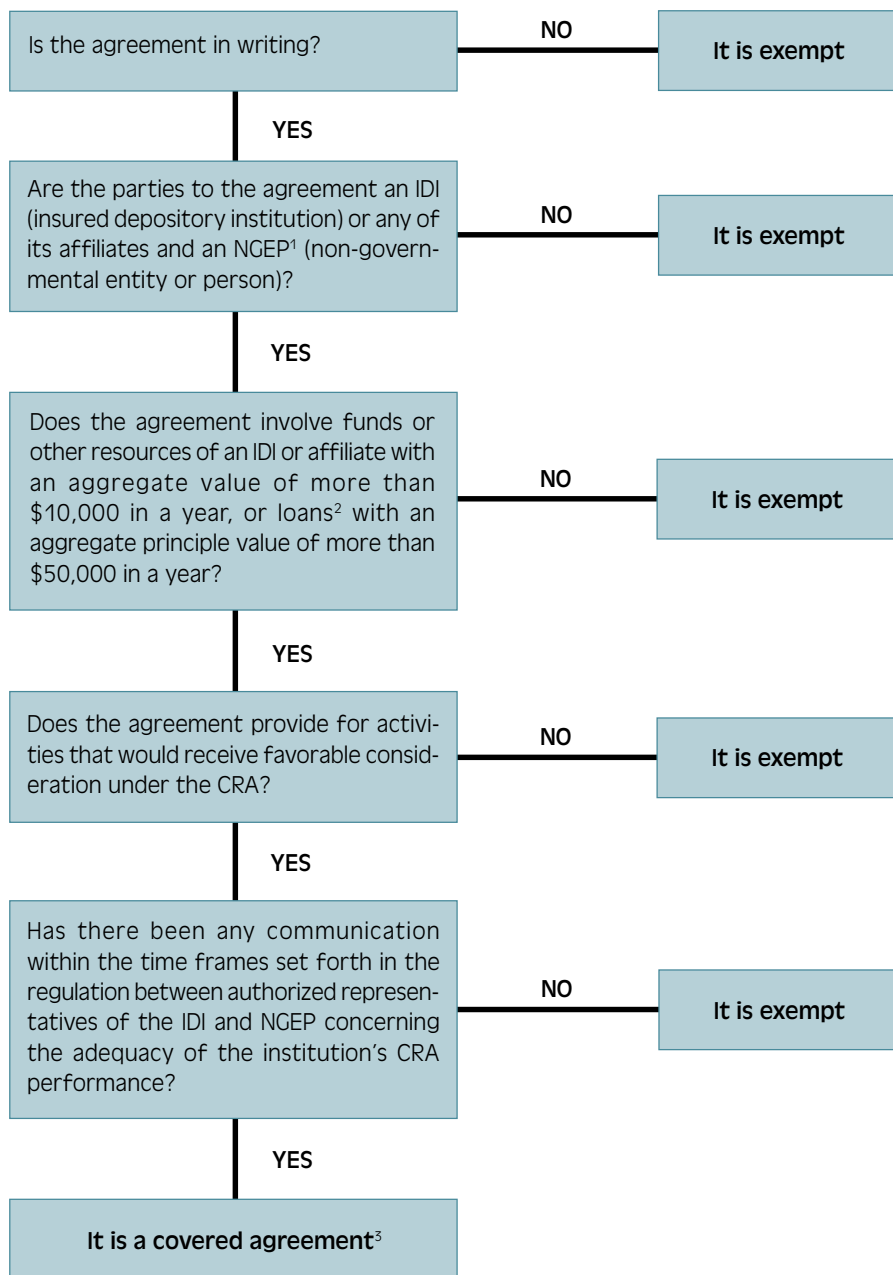
CRA Sunshine Flow Chart

This document serves as a summary of Section 711 of the Gramm-Leach-Bliley Act of 1999 and the final regulation governing the Disclosure and Reporting of CRA-Related Agreements ("CRA Sunshine") released through the Federal Register on January 10, 2001. This document is not comprehensive; please refer to the regulation for more guidance.

1 NGEPS are defined as any organization that is not a federal, state, local or tribal government entity. Included in this category are such organizations as Freddie Mac, Fannie Mae, and the Federal Home Loan Bank System.

2 The regulation provides for reporting exemptions for individual loans secured by real estate (irrespective of the identity of the borrower of the loan or the loan terms) and agreements to make a single loan as long as it is not loaned substantially below market rates and is not used to relend.

3 For additional reporting and disclosure guidance, please see the reporting requirements summary for IDIs and NGEPS on pages 9-10. A PowerPoint training resource and the Federal Register Rule are available to download from our website at: <http://www.frbsf.org/community/webresources/index.html>



NGEP Disclosure Requirements

- The obligation of an NGEP to disclose covered agreements to the public and to the federal regulatory banking agencies ends 12 months after the end of the term of the covered agreement.
- Disclosure requirements apply only to covered agreements entered into after November 12, 1999.

Disclosure of Covered Agreements by NGEPs to the Public

- The NGEP involved in a covered agreement must make a complete copy of the covered agreement available to any individual or entity upon request. At a minimum, the copy must include:
 - Names and addresses of the parties to the agreement
 - Amount of payments, fees, loans, etc.
 - How the funds will be used
 - The term of the agreement
 - Any other relevant information
 - The NGEP may withhold confidential or proprietary information as long as it is allowed under the Freedom of Information Act (FOIA)

Disclosure of Covered Agreement by NGEPs to the Agencies

- The NGEP involved in a covered agreement must make a complete copy of the covered agreement available within 30 days of receiving a request from a federal regulatory banking agency.
- If the publicly available version of the covered agreement differs in any way from the complete copy of the agreement, a copy of the public version of the agreement and an explanation justifying any FOIA exclusions must accompany the complete copy of the covered agreement.

NGEP Annual Reporting Requirements

- Annual reporting requirements apply only to covered agreements entered into on or after May 12, 2000.

NGEP Annual Report to the Agencies

- NGEPs that used funds or resources during the previous year that were associated with any covered agreement must file an annual report to the relevant supervisory agency (RSA) or an IDI within 6 months of the end of the year. At a minimum, the annual report must include:
 - The name and mailing address of the NGEP
 - Information sufficient to identify the agreement
 - Identify parties and date of the agreement
 - The amount of funds/resources received that year
 - Itemized list of how the funds/resources were used:
 - Compensation of officers, directors & employees
 - Administrative, travel, entertainment expenses
 - Payment of consulting & professional fees
 - Other expenses & uses
- A report prepared for any other purpose can be used so long as it contains all of the information required by the regulation. (For example, IRS Forms 990 or 990EZ)
- A single consolidated report covering all agreements may be filed if the NGEP is a party to 2 or more agreements.

IDI Disclosure Requirements

- The obligation of an IDI to disclose covered agreements to the public and to the federal regulatory banking agencies ends twelve months after the end of the term of the covered agreement.
- Disclosure requirements apply only to covered agreements entered into after November 12, 1999.

Disclosure of Covered Agreements by IDIs to the Public

- The IDI involved in a covered agreement must make a complete copy of the covered agreement available to any individual or entity upon request. At a minimum, the copy must include:
 - Names and addresses of the parties to the agreement
 - Amount of payments, fees, loans, etc.
 - How the funds will be used
 - The term of the agreement
 - Any other relevant information
- The IDI may withhold confidential or proprietary information as long as it is allowed under the Freedom of Information Act (FOIA)
- Copies may be placed in the CRA public file

Disclosure of Covered Agreement by IDIs to the Relevant Supervisory Agency (RSA)

Option #1

- The IDI involved in a covered agreement must submit to its RSA a complete copy of each agreement for that quarter within 60 days of the end of each quarter.
 - If the publicly available version of the covered agreement differs in any way from the complete copy of the agreement, a copy of the public version of the agreement and an explanation justifying any FOIA exclusions must accompany the complete copy of the covered agreement.

Option #2

- The IDI involved in a covered agreement must submit to its RSA a list of all agreements for that quarter. That list must contain:
 - Name and address of each IDI and NGEF involved in the agreement
 - The date the agreement was entered into
 - Estimated total value of payments, fees, loans, services, etc.
 - Date the agreement ends
- Complete copy and public copy of the agreement (if it differs in any way from the complete copy of the agreement) must be provided to the RSA within 7 days of an agency request.
- Disclosure obligation increases from 12 months to 36 months after the end of the term of the covered agreement

IDI Annual Reporting Requirements

- Annual reporting requirements apply only to covered agreements entered into on or after May 12, 2000.
- IDIs must file an annual report to its RSA within 6 months of the end of the year if it provided or received payments, fees or loans under a covered agreement that year or has data to report on loans, investments or services provided under a covered agreement that year. At a minimum, the annual report must include:
 - Name and principal place of business of the IDI
 - Information sufficient to identify the agreement
 - Identify parties and date of the agreement or provide a copy of the agreement
 - The aggregate amount of payments, fees and loans provided to or received by parties to the agreement
 - The aggregate amount of payments, fees and loans provided to an entity not party to the agreement
 - General description of terms and conditions
 - Can include references to past disclosures and annual reports if terms have already been reported
- A single consolidated report covering all agreements may be filed if the IDI is a party to 2 or more agreements.
- IDIs that receive annual reports from NGEFs have 30 days to forward it to the RSA.

- An itemized list of how the funds or resources were used, including:
 - compensation of officers, directors and employees
 - administrative, travel and entertainment expenses
 - payment of consulting or professional fees
 - other expenses and uses (NGEPs can use a report prepared for any other purpose as long as it contains all of the information required by the regulation)

An IDI must file an annual report if it, or any of its affiliates, provided or received payments, fees or loans under a covered agreement or it has any data to report on loans, investments or ser-

vices provided under a covered agreement that year. The IDI annual report must include the following:

- Name and principal place of business
- Information sufficient to identify the agreement
- Aggregate amounts of payments, fees and loans provided to or received by parties to the agreement or others that may not be a party to the agreement but are covered by the agreement
- A general description of the terms and conditions of the agreement

Both IDIs and NGEPs are permitted to submit a single consolidated report covering all agreements if they are a party to two or more agreements.

The first annual report is due on June 30, 2001, to each RSA or, for NGEPs, to an IDI that is party to the agreement. This annual report will cover agreements entered into between May 12, 2000 and December 31, 2000.

ENFORCEMENT

Willful failure by an NGEF to comply with these disclosure and reporting requirements within 90 days of receiving a written notice by a federal banking agency will result in having the agreements categorized as unenforceable and will allow IDIs to find successors to the agreements. For IDIs, a violation of the CRA Sunshine reporting requirement is a violation of the Federal Deposit Insurance Act and can result in all penalties associated with such a violation, including civil money penalties. *CI*

CRA Awards



Does your financial institution offer an innovative CRA program that you'd like to share with your colleagues and communities? Your chance is coming—the Federal Home Loan Bank of San Francisco and the Federal Reserve Bank of San Francisco will once again be conducting a CRA Awards competition in conjunction with the 2002 Community Reinvestment Conference (for more information on the conference see pg. 23).

The awards competition is an effort to recognize and share innovative and outstanding examples of CRA-eligible products or services that have a significant impact in the community. Awards will be given in five categories (but will be limited to one per category per institution): lending, investment, service, community development and innovative use of the Federal Home Loan Bank's Affordable Housing Program (AHP).

Submissions will be reviewed by a panel of community development professionals and will be judged for their innovativeness and impact on the community.

Watch your mail in the coming weeks for the official announcement of the awards program, which will provide information on the submission requirements and procedures. In the meantime, you can see the submissions and winners from the 2000 CRA Awards program, at www.frbsf.org (click "Community Development," then "Publications and Reports").