

also have access to the following additional information, which we will make available to you at this branch within five calendar days after you make a request to us: (1) a map showing the assessment area containing this branch, which is the area in which the FDIC evaluates our CRA performance in this community; (2) information about our branches in this assessment area; (3) a list of services we provide at those locations; (4) data on our lending performance in this assessment area; and (5) copies of all written comments received by us that specifically relate to our CRA performance in this assessment area, and any responses we have made to those comments. If we are operating under an approved strategic plan, you may also have access to a copy of the plan.

[If you would like to review information about our CRA performance in other communities served by us, the public file for our entire bank is available at (name of office located in state), located at (address).]

At least 30 days before the beginning of each quarter, the FDIC publishes a nationwide list of the banks that are scheduled for CRA examination in that quarter. This list is available from the Regional Manager, Division of Supervision and Consumer Protection(DSC), FDIC (address). You may send written comments about our performance in helping to meet community credit needs to (name and address of official at bank) and the FDIC Regional Manager. Your letter, together with any response by us, will be considered by the FDIC in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the FDIC Regional Manager. You may also request from the FDIC Regional Manager an announcement of our applications covered by the CRA filed with the FDIC. We are an affiliate of (name of holding company), a bank holding company. You may request from the (title of responsible official), Federal Reserve Bank of \_\_\_\_\_ (address) an announcement of applications covered by the CRA filed by bank holding companies.

## PART 346—DISCLOSURE AND REPORTING OF CRA-RELATED AGREEMENTS

Sec.

- 346.1 Purpose and scope of this part.
- 346.2 Definition of covered agreement.
- 346.3 CRA communications.
- 346.4 Fulfillment of the CRA.
- 346.5 Related agreements considered a single agreement.
- 346.6 Disclosure of covered agreements.
- 346.7 Annual reports.
- 346.8 Release of information under FOIA.
- 346.9 Compliance provisions.

346.10 Transition provisions.

346.11 Other definitions and rules of construction used in this part.

AUTHORITY: 12 U.S.C. 1831y.

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### § 346.1 Purpose and scope of this part.

(a) *General.* This part implements section 711 of the Gramm-Leach-Bliley Act (12 U.S.C. 1831y). That section requires any nongovernmental entity or person, insured depository institution, or affiliate of an insured depository institution that enters into a covered agreement to—

(1) Make the covered agreement available to the public and the appropriate Federal banking agency; and

(2) File an annual report with the appropriate Federal banking agency concerning the covered agreement.

(b) *Scope of this part.* The provisions of this part apply to—

(1) State nonmember insured banks;

(2) Subsidiaries of state nonmember insured banks;

(3) Nongovernmental entities or persons that enter into covered agreements with any company listed in paragraph (b)(1) and (2) of this section.

(c) *Relation to Community Reinvestment Act.* This part does not affect in any way the Community Reinvestment Act of 1977 (12 U.S.C. 2901 *et seq.*) or the FDIC's Community Reinvestment regulation found at 12 CFR part 345, or the FDIC's interpretations or administration of that Act or regulation.

(d) *Examples.* (1) The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part.

(2) Examples in a paragraph illustrate only the issue described in the paragraph and do not illustrate any other issues that may arise in this part.

### § 346.2 Definition of covered agreement.

(a) *General definition of covered agreement.* A covered agreement is any contract, arrangement, or understanding that meets all of the following criteria—

(1) The agreement is in writing.

## Federal Deposit Insurance Corporation

## § 346.2

(2) The parties to the agreement include—

(i) One or more insured depository institutions or affiliates of an insured depository institution; and

(ii) One or more nongovernmental entities or persons (referred to hereafter as NGEPS).

(3) The agreement provides for the insured depository institution or any affiliate to—

(i) Provide to one or more individuals or entities (whether or not parties to the agreement) cash payments, grants, or other consideration (except loans) that have an aggregate value of more than \$10,000 in any calendar year; or

(ii) 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.

(4) The agreement is made pursuant to, or in connection with, the fulfillment of the Community Reinvestment Act of 1977 (12 U.S.C. 2901 *et seq.*) (CRA), as defined in § 346.4.

(5) The agreement is with a NGEPS that has had a CRA communication as described in § 346.3 prior to entering into the agreement.

(b) *Examples concerning written arrangements or understandings*—(1) *Example 1.* A NGEPS meets with an insured depository institution and states that the institution needs to make more community development investments in the NGEPS's community. The NGEPS and insured depository institution do not reach an agreement concerning the community development investments the institution should make in the community, and the parties do not reach any mutual arrangement or understanding. Two weeks later, the institution unilaterally issues a press release announcing that it has established a general goal of making \$100 million of community development grants in low- and moderate-income neighborhoods served by the insured depository institution over the next 5 years. The NGEPS is not identified in the press release. The press release is not a written arrangement or understanding.

(2) *Example 2.* A NGEPS meets with an insured depository institution and states that the institution needs to

offer new loan programs in the NGEPS's community. The NGEPS and the insured depository institution reach a mutual arrangement or understanding that the institution will provide additional loans in the NGEPS's community. The institution tells the NGEPS that it will issue a press release announcing the program. Later, the insured depository institution issues a press release announcing the loan program. The press release incorporates the key terms of the understanding reached between the NGEPS and the insured depository institution. The written press release reflects the mutual arrangement or understanding of the NGEPS and the insured depository institution and is, therefore, a written arrangement or understanding.

(3) *Example 3.* A NGEPS sends a letter to an insured depository institution requesting that the institution provide a \$15,000 grant to the NGEPS. The insured depository institution responds in writing and agrees to provide the grant in connection with its annual grant program. The exchange of letters constitutes a written arrangement or understanding.

(c) *Loan agreements that are not covered agreements.* A covered agreement does not include—

(1) Any individual loan that is secured by real estate; or

(2) 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—

(i) The funds are loaned at rates that are not substantially below market rates; and

(ii) 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.

(d) *Examples concerning loan agreements*—(1) *Example 1.* An insured depository institution provides an organization with a \$1 million loan that is documented in writing and is secured by real estate owned or to-be-acquired by the organization. The agreement is an individual mortgage loan and is exempt from coverage under paragraph (c)(1) of this section, regardless of the

### § 346.3

### 12 CFR Ch. III (1–1–08 Edition)

interest rate on the loan or whether the organization intends or is authorized to re-loan the funds to a third party.

(2) *Example 2.* An insured depository institution commits to provide a \$500,000 line of credit to a small business that is documented by a written agreement. The loan is made at rates that are within the range of rates offered by the institution to similarly situated small businesses in the market and the loan documentation does not indicate that the small business intends or is authorized to re-lend the borrowed funds. The agreement is exempt from coverage under paragraph (c)(2) of this section.

(3) *Example 3.* An insured depository institution offers small business loans that are guaranteed by the Small Business Administration (SBA). A small business obtains a \$75,000 loan, documented in writing, from the institution under the institution's SBA loan program. The loan documentation does not indicate that the borrower intends or is authorized to re-lend the funds. Although the rate charged on the loan is well below that charged by the institution on commercial loans, the rate is within the range of rates that the institution would charge a similarly situated small business for a similar loan under the SBA loan program. Accordingly, the loan is not made at substantially below market rates and is exempt from coverage under paragraph (c)(2) of this section.

(4) *Example 4.* A bank holding company enters into a written agreement with a community development organization that provides that insured depository institutions owned by the bank holding company will make \$250 million in small business loans in the community over the next 5 years. The written agreement is not a specific contract or commitment for a loan or an extension of credit and, thus, is not exempt from coverage under paragraph (c)(2) of this section. Each small business loan made by the insured depository institution pursuant to this general commitment would, however, be exempt from coverage if the loan is made at rates that are not substantially below market rates and the loan documentation does not indicate that

the borrower intended or was authorized to re-lend the funds.

(e) *Agreements that include exempt loan agreements.* If an agreement includes a loan, extension of credit or loan commitment that, if documented separately, would be exempt under paragraph (c) of this section, the exempt loan, extension of credit or loan commitment may be excluded for purposes of determining whether the agreement is a covered agreement.

(f) *Determining annual value of agreements that lack schedule of disbursements.* For purposes of paragraph (a)(3) of this section, a multi-year agreement that does not include a schedule for the disbursement of payments, grants, loans or other consideration by the insured depository institution or affiliate, is considered to have a value in the first year of the agreement equal to all payments, grants, loans and other consideration to be provided at any time under the agreement.

#### § 346.3 CRA communications.

(a) *Definition of CRA communication.* A CRA communication is any of the following—

(1) Any written or oral comment or testimony provided to a Federal banking agency concerning the adequacy of the performance under the CRA of the insured depository institution, any affiliated insured depository institution, or any CRA affiliate.

(2) Any written comment submitted to the insured depository institution that discusses the adequacy of the performance under the CRA of the institution and must be included in the institution's CRA public file.

(3) Any discussion or other contact with the insured depository institution or any affiliate about—

(i) Providing (or refraining from providing) written or oral comments or testimony to any Federal banking agency concerning the adequacy of the performance under the CRA of the insured depository institution, any affiliated insured depository institution, or any CRA affiliate;

(ii) Providing (or refraining from providing) written comments to the insured depository institution that concern the adequacy of the institution's performance under the CRA and must