

§ 533.8

may file a single consolidated annual report relating to the agreement with each relevant supervisory agency for the covered agreement.

(iii) *Content of report.* Any consolidated annual report must contain all the information required by this paragraph (e). The amounts and data required to be reported under paragraphs (e)(1)(iv) and (e)(1)(vi) of this section may be reported on an aggregate basis for all covered agreements.

(f) *Time and place of filing—(1) General.* Each party must file its annual report with each relevant supervisory agency for the covered agreement no later than six months following the end of the fiscal year covered by the report.

(2) *Alternative method of fulfilling annual reporting requirement for a NGEF.*

(i) A NGEF may fulfill the filing requirements of this section by providing the following materials to an insured depository institution or affiliate that is a party to the agreement no later than six months following the end of the NGEF's fiscal year—

(A) A copy of the NGEF's annual report required under paragraph (d) of this section for the fiscal year; and

(B) Written instructions that the insured depository institution or affiliate promptly forward the annual report to the relevant supervisory agency or agencies on behalf of the NGEF.

(ii) An insured depository institution or affiliate that receives an annual report from a NGEF pursuant to paragraph (f)(2)(i) of this section must file the report with the relevant supervisory agency or agencies on behalf of the NGEF within 30 days.

§ 533.8 Release of information under FOIA.

OTS will make covered agreements and annual reports available to the public in accordance with the Freedom of Information Act (5 U.S.C. 552 *et seq.*), OTS's rules (part 505 of this chapter), and the Department of Treasury's rules (31 CFR part 1). A party to a covered agreement may request confidential treatment of proprietary and confidential information in a covered agreement or an annual report under those procedures.

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§ 533.9 Compliance provisions.

(a) *Willful failure to comply with disclosure and reporting obligations.* (1) If OTS determines that a NGEF has willfully failed to comply in a material way with §§ 533.6 or 533.7 of this part, OTS will notify the NGEF in writing of that determination and provide the NGEF a period of 90 days (or such longer period as OTS finds to be reasonable under the circumstances) to comply.

(2) If the NGEF does not comply within the time period established by OTS, the agreement shall thereafter be unenforceable by that NGEF by operation of section 48 of the Federal Deposit Insurance Act (12 U.S.C. 1831y).

(3) OTS may assist any insured depository institution or affiliate that is a party to a covered agreement that is unenforceable by a NGEF by operation of section 48 of the Federal Deposit Insurance Act (12 U.S.C. 1831y) in identifying a successor to assume the NGEF's responsibilities under the agreement.

(b) *Diversion of funds.* If a court or other body of competent jurisdiction determines that funds or resources received under a covered agreement have been diverted contrary to the purposes of the covered agreement for an individual's personal financial gain, OTS may take either or both of the following actions—

(1) Order the individual to disgorge the diverted funds or resources received under the agreement;

(2) Prohibit the individual from being a party to any covered agreement for a period not to exceed 10 years.

(c) *Notice and opportunity to respond.* Before making a determination under paragraph (a)(1) of this section, or taking any action under paragraph (b) of this section, OTS will provide written notice and an opportunity to present information to OTS concerning any relevant facts or circumstances relating to the matter.

(d) *Inadvertent or de minimis errors.* Inadvertent or de minimis errors in annual reports or other documents filed with OTS under §§ 533.6 or 533.7 of this part will not subject the reporting party to any penalty.

(e) *Enforcement of provisions in covered agreements.* No provision of this part shall be construed as authorizing OTS

to enforce the provisions of any covered agreement.

§ 533.10 Transition provisions.

(a) *Disclosure of covered agreements entered into before the effective date of this part.* The following disclosure requirements apply to covered agreements that were entered into after November 12, 1999, and that terminated before April 1, 2001.

(1) *Disclosure to the public.* Each NGEF and each insured depository institution or affiliate that was a party to the agreement must make the agreement available to the public under § 533.6 of this part until at least April 1, 2002.

(2) *Disclosure to the relevant supervisory agency.* (i) Each NGEF that was a party to the agreement must make the agreement available to the relevant supervisory agency under § 533.6 of this part until at least April 1, 2002.

(ii) Each insured depository institution or affiliate that was a party to the agreement must, by June 30, 2001, provide each relevant supervisory agency either—

(A) A copy of the agreement under § 533.6(d)(1)(i) of this part; or

(B) The information described in § 533.6(d)(1)(ii) of this part for each agreement.

(b) *Filing of annual reports that relate to fiscal years ending on or before December 31, 2000.* In the event that a NGEF, insured depository institution or affiliate has any information to report under § 533.7 of this part for a fiscal that ends on or before December 31, 2000, and that concerns a covered agreement entered into between May 12, 2000, and December 31, 2000, the annual report for that fiscal year must be provided, no later than June 30, 2001, to—

(1) Each relevant supervisory agency; or

(2) In the case of a NGEF, to an insured depository institution or affiliate that is a party to the agreement in accordance with § 533.7(f)(2) of this part.

§ 533.11 Other definitions and rules of construction used in this part.

(a) *Affiliate.* *Affiliate* means—

(1) Any company that controls, is controlled by, or is under common control with another company; and

(2) For the purpose of determining whether an agreement is a covered agreement under § 533.2, an *affiliate* includes any company that would be under common control or merged with another company on consummation of any transaction pending before a Federal banking agency at the time—

(i) The parties enter into the agreement; and

(ii) The NGEF that is a party to the agreement makes a CRA communication, as described in § 533.3 of this part.

(b) *Control.* *Control* is defined in section 2(a) of the Bank Holding Company Act (12 U.S.C. 1841(a)).

(c) *CRA affiliate.* A *CRA affiliate* of an insured depository institution is any company that is an affiliate of an insured depository institution to the extent, and only to the extent, that the activities of the affiliate were considered by the appropriate Federal banking agency when evaluating the CRA performance of the institution at its most recent CRA examination prior to the agreement. An insured depository institution or affiliate also may designate any company as a *CRA affiliate* at any time prior to the time a covered agreement is entered into by informing the NGEF that is a party to the agreement of such designation.

(d) *CRA public file.* *CRA public file* means the public file maintained by an insured depository institution and described in § 563.43 of this chapter.

(e) *Executive officer.* The term *executive officer* has the same meaning as in § 215.2(e)(1) of the Board of Governors of the Federal Reserve's Regulation O (12 CFR 215.2(e)(1)). In applying this definition under this part, the term *savings association* shall be used in place of the term *bank*.

(f) *Federal banking agency; appropriate Federal banking agency.* The terms *Federal banking agency* and *appropriate Federal banking agency* have the same meanings as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(g) *Fiscal year.* (1) The fiscal year for a NGEF that does not have a fiscal year shall be the calendar year.

(2) Any NGEF, insured depository institution, or affiliate that has a fiscal