

§ 35.1

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

SOURCE: 66 FR 2084, Jan. 10, 2001, unless otherwise noted.

§ 35.1 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 national banks, subsidiaries of national banks, and nongovernmental entities or persons that enter into covered agreements with a national bank or a subsidiary of a national bank.

(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.*), part 25 of this chapter (Community Reinvestment Act and Interstate Deposit Production Regulations) or the OCC'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.

§ 35.2 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.

(2) The parties to the agreement include—

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

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(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 § 35.4.

(5) The agreement is with a NGEF that has had a CRA communication as described in § 35.3 prior to entering into the agreement.

(b) *Examples concerning written arrangements or understandings—*(1) *Example 1.* A NGEF meets with an insured depository institution and states that the institution needs to make more community development investments in the NGEF's community. The NGEF 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 NGEF is not identified in the press release. The press release is not a written arrangement or understanding.

(2) *Example 2.* A NGEF meets with an insured depository institution and states that the institution needs to offer new loan programs in the NGEF's community. The NGEF and the insured depository institution reach a mutual arrangement or understanding that the institution will provide additional