Excerpts from the National Conference on Community Development Investments

September 28, 1999

Contributors

Setting the Stage

Moderated by Alicia Williams, Vice President and Community Affairs Officer at the Federal Reserve Bank of San Francisco

- Steve Cross, Director of the Federal Deposit Insurance Corporation's Division of Compliance and Community Affairs
- Karen Wegmann, Executive Vice President at Wells Fargo Bank
- Daniel Immergluck, Senior Vice President at the Woodstock Institute
- William Ryback, Associate Director of the Federal Reserve Board's Division of Banking Supervision Operations

Equity Investments/"Membership Shares"

Moderated by Shelia McAfee-Watson, Community Affairs Advisor at the Federal Reserve Bank of Dallas

- Malloy Harris from the Comptroller of the Currency
- Karl Robinson, Internal Management Consultant at the Neighborhood Reinvestment Corporation
- Margaret Lehr, Director of Strategic Initiatives at the National Community Capital Association
- Mike Pitchford, Senior Vice President at Bank of America
- Judd Levy, President of Community Development Trust

Fixed Income Securities

Moderated by Fred Mendez, Community Investment Advisor at the Federal Reserve Bank of San Francisco

- Glenn Loney, Deputy Director of the Federal Reserve Board's Division of Consumer and Community Affairs
- Robert Taylor, Senior Vice President at Wells Fargo Bank and President of the Wells Fargo Bank Community Development Corporation
- Roan Blacker, Director and Treasurer of The American Homeownership Foundation
- David Zwick, President of CRAFund Advisors
- Joseph Cilia, Senior Analyst with the Federal Reserve Bank of Chicago

On September 28, 1999, approximately 150 financial institution representatives, community development practitioners and investment specialists met in Chicago to attend a conference designed to align Community Reinvestment Act (CRA) investments with other bank regulations and accounting principles. This conference was co-sponsored by the Federal Reserve Banks of Richmond, Chicago, Dallas and San Francisco. William Conrad, First Vice President of the Federal Reserve Bank of Chicago summarized the purpose of the meeting. Excerpts from Mr. Conrad's speech and three conference sessions – Setting the Stage, Equity Investments and Fixed Income Investments – are presented in Community Investments as our special insert.

William Conrad: Since the revised CRA was adopted in May of 1995, there is no other component of the new regulation that has caused as much confusion as the Investment Test. I can attest that the Investment Test has certainly kept our System's Community Affairs professionals busy.

The CRA Investment Test was designed to allow banks to meet their obligation under the CRA through methods that are "innovative, creative and flexible" - adjectives that appear several times throughout the regulation. The agencies recognize that all financial institutions cannot be all things to all people. Financial institutions vary in size and specialty, and although they are federally insured, financial institutions are private enterprises, so consequently, agencies cannot and will not dictate what specific products and services they can offer, as long as they are permissible by current banking laws. What the CRA tries to accomplish is that it recognizes the diversity of financial products and services available to consumers, and allows banks to help meet credit and service needs through a variety of ways. By encouraging banks and thrifts to develop and seek creative investment opportunities, financial institutions can both act as a catalyst for other private-sector investment, as well as make a vested interest in communities in which they are chartered to do business. Revisions to Regulation Y, The Bank Holding Company Act, and Regulation H, Membership of State Chartered Financial Institutions to the Federal Reserve System, have only hastened bank interest in investments that fit the definition of "public welfare." Consequently, it seems that new opportunities for bank investment are being developed and offered to financial institutions at a rapid rate.

It has been part of our mission as a regulator to define what is and what is not "public welfare," and consequently, what can be "counted" under the CRA Investment Test. We have designed the panels for today's conference to be interactive ones: panelists consist of practitioners, and both safety and soundness and compliance examiners. This was done deliberately in order to promote cutting-edge dialogue and agency interpretation of how each specific initiative relates to relevant banking regulations. This format, I believe, will serve to help demystify the CRA Investment Test.

SETTING THE STAGE

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How do community development investments fit within the context of the CRA?

Steve Cross: Within the CRA Regulation, the definition of community devel opment is established and includes four features: affordable housing, community development services, promotion of economic development, and revitalization and stabilization of low- and moderate-income neighborhoods. There are different tests for small, wholesale/limited purpose, and large banks.

There's no investment requirement for small banks-they are essentially subject to lending as a baseline. However, to get an outstanding rating, small banks, with rare exceptions, must engage in community development investing.

Wholesale/limited purpose banks are required to make qualified investments since they are subject to the community development test-meaning that they are examined for investments, loans, and services that serve community development purposes. Investment activity is, therefore, essential.

For large retail institutions, investments represent about 25% of the overall CRA rating. Examiners initially focus on investments made within an institution's assessment area or statewide/regional area that includes the assessment area, and focus on the number and dollar amount of investments. They also look at investments made over the period of evaluation as well as the number of investments that are on an institution's books at the end of an exam period. These investments include contributions with community development as their primary purpose.

In terms of geography, examiners consider investments within a statewide or regional area so long as the area that is covered includes an institution's assessment area. This approach is especially useful if there are limited local investment opportunities. If a bank is deemed to be satisfactory, then examiners may look nationwide at other investments in considering granting an outstanding rating.

What has been the impact of investments on bank CRA compliance?

Karen Wegmann: No doubt banks have made more investments, urban and rural, than they would have without the CRA Regulation. This has probably helped to stop the deterioration of existing affordable housing units and has helped in preserving the current stock of affordable housing.

There are a lot of programs that are presented as the "end-all" to meeting community needs. It is important that bank investors check out the track records of the organizations through which they invest carefully, and that they talk with other investors about the potential for return and about the community's experience with the investment provider.

What has the impact been of any particular investment? What has the regulation really accomplished?

Dan Immergluck: As a result of the revised CRA, banks are more eager to make investments and are careful to distinguish intention from action. However, bankers don't always make "tough" investments, and many complain that there simply are no investments to be made. These bankers can't expect investments will be set up and ready to go.

There has been an increase in innovation of product offerings and there is clearly a focus on investments in low- and moderate-income communities. Although we hear horror stories from bankers about examiners who ask for information about the impact an investment has on low- and moderate-income people, this is generally a good requirement of the regulation.

Steve Cross: Examiners can rely on the performance context to consider the impact of qualified investments on people who are above 80% of area median income. For example, in New York City, housing costs are high, and so a program that focuses on serving people with income that is 105% of area median income may be acceptable for CRA consideration. The regulation, through the performance context, allows examiners to determine these activities that may be exceptions and can be considered for CRA qualification.

Qualified investments must have as their primary purpose community development, and a lot of questions have been raised about what this means. It is important for bankers to make arguments for why an activity should receive CRA consideration. For example, as few as 20% of the units in a housing project could be set aside for low- and moderate income people, but the nature of the development program may be to revitalize the neighborhood, bring in retail, or bring in a mix of incomes.

The investment test requires bank representatives with little investment experience to find qualified investments. What advice would a safety and soundness examiner give them?

Bill Ryback: Process and context are essential. Bank investment programs must start at the board of directors level, with defined goals and objectives for managing this piece of their business. The board should also decide what they believe are eligible investments. Too often, investments are dumped on a junior officer, which leads to problems and besides, boards often have experience that can contribute to an investment program. Management must next define what it considers to be eligible, safe and sound investments within the parameters set by the board, and should consider investments that reflect the bank's strengths. For example, mortgage lenders should consider mortgage- and housing-related investments. Management must also make sure there is staff experience to carry out the purchase of these investments, and to monitor their performance. The board should then review the investment portfolio at least quarterly to make sure it fits within the established guidelines and that performance of these investments meets the bank's desired goals.

What would be your advice on how a financial institution can identify and book qualified investments

Karen Wegmann: Involvement and support from the board of directors is essential. In some ways this is the most expensive part of CRA-yields of CRA-related investments can be from zero to market and the performance of most of these investments is less predictable than the performance of a loan program. Bankers need to balance safety and soundness of investments with flexibility. There are some non-cutting edge investments that are basic and strong, such as those related to affordable housing, and these are important components of a CRA program. Bankers must determine the range of yield that is acceptable to them, and recognize that increased competition has caused returns for some vehicles to go down because of high demand.

How much is enough?

Karen Wegmann: Each bank must determine this. One way is to take a look at CRA performance evaluations from banks that are like yours, and see what the investment level was versus tier one capital. Outstandings should be anywhere from 3-5% of tier one at many banks. Be prepared to tell your board this and provide some back up like that from peer CRA performance evaluations. Also, remember that geographic distribution is important-look at deposit dollars and where they come from when determining where investment dollars should be distributed.

What do you do when there is nothing to invest in?

Karen Wegmann: Try to establish something with other banks or community groups that you can do together. Use models that you've seen in other areas—Wells Fargo has done this in some areas.

It is important to understand whether or not the investment will count, so ask your examiners before you invest if you're not sure, and really pay attention to documentation. For example, make sure there is evidence of a wire transfer when you fund an investment using a wire.

In some markets there is keen competition for investments. Don't be discouraged. As we learn more, newer ways to make tried and true investments will arise.

Lastly, review your portfolio on an ongoing basis-look at yield, safety and soundness and whether the investment is benefiting the community and if so how. Make sure the investment performs as was intended.

What role can community-based organizations and other intermediaries play in implementing an investment strategy?

Karen Wegmann: If you meet with community organizations on an ongoing basis, they may know of activities that could lead to investment opportunities. Or, if in an area with no opportunities, they can be helpful in bringing partners together. Community activists can monitor activities to make sure investments are doing what they are supposed to. Examiners will be going to the community to ask, so you have an obligation in your area to know the impact of your investments.

Dan Immergluck: I agree with Karen's points, especially in developing capacity and demand for investments. I've been concerned about the growing trend toward "commoditization" of investments-the growing secondary market activity is good, but there are potential downsides. To the extent that a bank relies on these types of investments, it may miss out on local investment opportunities, and may not see what impact the eventual flow of capital has on the community. Relationships will be harder to maintain that you develop through direct local investments, but the rewards will be greater.

In evaluating and purchasing investments, is there a certain level that is acceptable to the agencies?

Steve Cross: There is no single benchmark. Karen's advice is useful-look at other CRA performance evaluations. I know there was a sense early on that there were actually two tests: one for number and quantity, and one for innovativeness. That's not what was intended and is not reflected in the recent Q&A. We are conveying to examiners that they must look at performance first by number and amount of investments. However, there also may be things that have a particular impact that require up-front time to get going. We don't want everyone running to the easy investments and avoiding new ones that break new ground. If you choose to follow that path, we will take that into account. That's one of the reasons there are no benchmarks. Examiners need to understand the difference and what the bank did-invest or create. When I was at the Comptroller's office, we did have senior examiners come in to consider establishing benchmarks. Ultimately we decided it wouldn't work.

I was on an examination during which we looked at deposit entries on the call report to see where the bank was doing business. We then looked at where deposits were coming from and where investments were going. If the bank claimed there were no opportunities, we looked at what was, or what could be, created. Being a catalyst is what's considered on the qualitative side of the exam.

Karen Wegmann: I want to emphasize looking at peer CRA performance evaluations. Innovation can mean taking the lead and putting something together—you instigate and so are creative. It is also important to anticipate the need to defend older, existing investments such as investments in consortia that are doing solid work. You'll need to be prepared to discuss things that these groups are doing that are adding value to the community.

To what extent is the integration of community development investments into a bank's overall plan important in the examination process? Are there demerits for those investments purchased solely for community development with no other relevance to the bank?

Steve Cross: The intent of the law is to encourage banks and thrifts to look at their business strategies and to see if they may have overlooked potentially profitable markets due to stereotypes or a lack of familiarity. The purpose of the CRA is to expand the envelope.

The issue of whether something is done for the CRA examination exclusively doesn't matter to the examiner-over time however, this strategy is probably not sustainable. For example, there are banks without branches that have opened them in inner cities and have been profitable, but there are others that have done the same but not made money and so later closed the branch. It's all in the execution of the strategy. One bank did its homework and tried to make the investment work. Examiners will count this as a branch opened in a low- and moderate-income area in either case, but the former is considered more important and to have a greater impact.

There exists a notion that there is a portfolio of CRA loans that is passed among banks before exams. One has to wonder who benefits except for the marketers of these investments. It is important that examiners are aware of what these investments are and that they use the performance context to see if this "gaming" is taking place. Examiners need to have discussions with institutions that are only engaged in this type of CRA portfolio building.

The short answer to this question-if it fits under the regulation, is yes, these investments will be counted. But knowledgeable examiners will give greater weight to those investments that are made for reasons other than simply to satisfy compliance needs.

Karen Wegmann: Those who've been successful at lending for CRA have figured how to make this part of their overall lending programs. Their CRA programs are not isolated, but are part of all lending that is done. We haven't figured that out yet with investments-and I think it's because of the yields.

How do I articulate to my board how much is enough? Are there any specific examples of the nexus between safe and sound and qualified investments? Are there any flexible and innovative investments that could jeopardize a bank's safety and soundness?

Bill Ryback: I have no specific advice on how to steer that ship. Whatever the investment is, it has to be consistent with the bank's investment plan. If otherwise, then it's a good idea to hire experienced people who can manage a specific portfolio.

Dan Immergluck: The CRA doesn't appear to be a contributor to bank losses. Problems are based in execution and earnestness. Intermediation may contribute to unwise investments because bankers are no longer working directly with originating community organizations.

Can you describe any investments you've created? Is there anything out of the CRA realm that has qualified? Do the examiners only look at the CRA side of the bank or at the total impact of investments on a community?

Karen Wegmann: There is the indirect tax credit for affordable housing-a couple of national funds have been successful with this-but you still must monitor these. There are also simple investments like loan consortia where good management is essential. Organizations like ACCION can be good vehicles to help a bank cause micro lending to happen. If you pay attention, there are certain kinds of investments that will be the successful ones.

Steve Cross: We look at the bank and its affiliates without distinguishing whether investments were made by the bank or an affiliate. For example, one bank does a substantial amount of community development investments through a for-profit bank-owned community development corporation (CDC). That CDC buys multi-family properties, rehabs them, then markets them at affordable rents. The CDC's actions are CRA-eligible for the entire institution. Also we can look at bank tax credit deals separately from the CDC-we're neutral as to the structure the bank uses.

To me the CRA is about giving back to the community-an expanded definition of community service. How can we count grants to organizations that do cancer research, assist the elderly or help AIDS patients?

Steve Cross: The service component of the CRA is focused on services targeted to low- and moderate-income people. Therefore whether a contribution qualifies is going to depend on who the intended beneficiaries are. For example, when we look at bank contributions to a college, we might look for a bank scholarship fund for children from low- and moderate-income neighborhoods.

Cancer research, funding for AIDS, or providing funds for day care are about the income levels of the intended beneficiaries. The general population doesn't count under the CRA.

If mixed-income housing projects count, couldn't the same apply to an investment in which only 50% of cancer research recipients are low- and moderate-income?

Steve Cross: The way we've set up the investment test, the examiner is operating within the Q&A construct for interpretive guidance. We have said either an investment does or doesn't have a community development purpose-that is, either it counts or it doesn't. To count, we use 50% or more as a clear cut measure, but we can also look to see that community development is the primary purpose, even if fewer than 50% of units are set aside for low- and moderate-income people. With cancer research, we would need to review each investment to determine whether community development is the primary purpose.

Karen Wegmann: Cancer research is a really tough one. It can be a burden to a nonprofit, but you should ask the organization to keep records on incomes of their constituent's neighborhood or income levels.

Equity Investments

Moderated by Shelia McAfee-Watson, Community Affairs Advisor at the Federal Reserve Bank of Dallas

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I. Low Income Housing Tax Credits

How do low-income housing tax credits work?

Karl Robinson: Tax credits are managed by designated agencies, which develop allocation plans before assigning tax credits to projects. In most cases, allocation is based on a point system with priority given to those projects that benefit the lowest income populations and that have the highest impact. Each project must have monitoring plans in place. Tax credit projects generally qualify as CRA-qualified investments.

Since its inception, the low-income housing tax credit has been one of the primary ways in which low-income housing is produced and brought onto the market. Equity is created when investors are given the future promise of low-income tax credit losses that are generated from project sales after a 15-year holding period.

The National Equity Fund has a good structure to bring capital to projects—it's a nonprofit whose parent corporation is Local Initiatives Support Corporation (LISC). The National Equity Fund manages limited partnerships. The Fund's direct investment model allows investors to invest directly into projects and takes advantage of technical expertise in place. Investors can choose projects strategically, to maximize benefit for their assessment areas.

What are the CRA implications if a qualified investment and related project goes sour?

Malloy Harris: Recapture is not a CRA consideration. CRA consideration is made at the time of investment, plus additional credit is given each year based on what is allowed.

II. Community Development Real Estate Investment Trusts

How do community development real estate investment trusts (REITs) work?

Judd Levy: REITs have been around for 40 years—they started in the early 1960's. Before that there was no way for individuals to buy real estate in small amounts, so Congress allowed for the creation of these "money market-like" funds. Today we have REITS for a variety of project types including prisons, retail establishments, and housing. Since there's no reason to not apply this concept to community development, LISC created a for-profit REIT to carry out its secondary market activity. It raised $32 million from various corporate investors including financial institutions and insurance companies. For more information, see the regulatory interpretive letter on the subject.

The REIT operates as a national company making loans or buying real estate within four regions across the nation. Generally, the REIT buys smaller loans that don't conform to traditional markets and are for amounts as low as $250,000. The REIT can also include loans on assisted living or scattered site housing-anything not generally acceptable to mainstream.

For example, Key Healthcare, a part of Key Bank, did a tax credit deal on housing on a project, with a five-year balloon, which was not really saleable. Key Healthcare rewrote the terms for the REIT so it could be purchased, then sold to an institutional investor. Another example is a nonprofit that originated a 15-year tax credit deal. The organization was only offered a short-term and expensive bank deal, so the REIT created a secondary market to allow for these loans to be made by life insurance companies. Loans are divided into pieces and each piece is graded accordingly.

The REIT is willing to acquire expiring Section 8 properties. Shifting rents to market levels may encourage owners to withdraw from the program to move units to market, even with vouchers. The REIT can work with those who want to sell rather than hold for market rents. With a negative tax basis and capital gains on sale a problem, the REIT can swap an interest in a tax-free swap and defer the gain. When an owner dies, the tax basis is adjusted to market, so this way the heirs can avoid capital gains.

How can an institution get credit for this type of investment?

Malloy Harris: Generally, investments in national equity funds like this are not allowed. But, because targeting is allowed (since this fund has broken the country up into four regions) and the bank can invest in regional investments, this would be eligible. A national equity fund not divided geographically would not provide the same qualification.

Also, it is important to recall that any opinion letter issued by the FFIEC assumes that community development is the primary purpose. Banks must make sure investments meet the definition of community development as the primary purpose. Regulatory letters won't help if this condition hasn't been met.

Judd Levy: Leveraging non-CRA investor money is also an advantage to banks that invest.

If banks invest, what CRA credit do they get?

Malloy Harris: They would receive credit for their investment only, not as a pro-rata share of the total.

Is there any way to get assets in the hands of low-income people? This Wall Street model is good, but at what point will CDFIs help families to build wealth?

Judd Levy: I'm not sure I agree with your premise. If you consider that tenants could be evicted if their rents jump to market, then preserving their housing is a tangible benefit to these families. Also, these investments can be made in charter schools, day care centers, or other community-related projects as long as they're secured by real estate. We cannot do economic development lending since this is not part of the REIT law.

Do investors get credit for responsiveness of investment? Given that there is leverage, would the fact that there is a multiplier effect translate into a qualitative factor in looking at responsiveness?

Malloy Harris: Of course—to the extent that the bank's investment will first address needs in the assessment area.

III. Small Business Investment Companies

Does Bank of America have a Small Business Development Company (SBIC)?

Mike Pitchford: Bank of America's SBIC does not use Small Business Administration funds so there is more freedom. The SBIC is oriented to small-scale venture capital, is geographically targeted, is focused on jobs creation, and targets community development-based efforts. We document the number of jobs that are created with these funds. Rates of return tend to vary—some investments may lose money but have huge impact on a neighborhood-so it is important to know ahead of time how much money you are going to lose. For example, we may choose to buy a liquor store and shut it down as a method of improving a community.

Do you have any advice for a bank that is considering creating an SBIC?

Mike Pitchford: Don't start an SBIC to make money, since independent public offerings don't happen in this arena. Do it for the impact you can have.

If a bank invests in an SBIC, can it get credit for loans made by the SBIC?

Malloy Harris: It's possible to get consideration depending on the way the investment is made-you can get consideration for the investment and for lending in some cases.

Is this also true for REITs?

Malloy Harris: If the bank's investment constitutes an equity position, the answer is "yes."

The regulators seem to be hung up on SBICs and have a hard time with minority-targeted funds. Where are the regulators going with this and other investments?

Malloy Harris: Examiners see that SBICs have been recognized as economic development facilitators. An examiner may have a hard time evaluating other investments that finance small businesses and/or stabilize low-income geographies. Examiners need bank assistance in figuring out how an investment meets the community development definitions. Minority investments are not necessarily targeted to low-and moderate-income people.

But SBICs are not necessarily targeted to job creation, livable wages, etc., and yet the regulators say these do qualify. Why is this?

Malloy Harris: If an SBIC doesn't target its activities to the bank's assessment area-then it doesn't count.

While there are housing and job creation needs, there are also other things like drug rehabilitation or community policing-are there any examples of an organization that has addressed these issues and stimulated qualified investments?

Judd Levy: LISC has a fairly active community-policing program.

Malloy Harris: The regulation allows for community development that is not focused on economic development. Community services include education, day care, and other services that need to be offered that allow people to become a part of the job market. Drug addicted people may need skills or education. How the banks get involved in these activities depends on the needs of the organizations, and would be considered positively.

There is an independent banker's bank in Texas that brought together 57 community banks into a regional SBIC whose primary purpose is to allow independent banks to provide equity to small businesses. There was one participating bank that wanted to invest, but the SBIC's lending and investment activity was not in the investor's assessment area. What should the bank do?

Malloy Harris: In this case, first, an issue that came up is that the bank can't get consideration until the SBIC has been approved (it's not enough to just make a commitment). If the SBIC's region included the investor's assessment area in its target, then the investment would be okay-that is, the investment must have the potential to benefit the assessment area.

IV. Community Development Banks/Community Development Financial Institutions ... Equity Equivalent Investments

How can a bank work with community development financial institutions (CDFI's)?

Margaret Lehr: There are about 500 CDFI's nationwide that have provided almost $3.0 billion in financing. These include regulated institutions like banks and credit unions and unregulated organizations like loan funds. Most CDFI's are not regulated. There has been no loss of principal to date.

Equity equivalent investments (also known as "EQ 2") provide banks with multiplied and/or flexible credit and provide equity-like capital for CDFIs. Banks carry these as investments under Generally Accepted Accounting Principles (GAAP). So, you must know you will recover principal. The EQ 2 is an unsecured obligation to a CDFI, fully subordinated to debt, and payment cannot be accelerated. Also, the interest rate on the investment is independent of CDFI's income (the rate is currently fixed at a discounted rate below the 10-year Treasury bill rate). An EQ 2 has a rolling term and therefore an indefinite maturity. A strong argument can be made for booking these investments at cost, but below-market rate loans investments, according to FASB 116, must be booked at market. The difference between market and face is the expense shown as a contribution to the CDFI. This has raised problems, so we are looking to convene a meeting to pursue this issue further.

The EQ 2 was created for CDFIs to overcome capital constraints. Also, when it invested in the program, Citibank looked at moderate-to-strong demand for loans as an essential ingredient, and at moderate-to-strong supply for affordable debt. This program is ideal for banks looking for multiplied CRA credit (for both lending and investment test credit) seeking to get principal back.

Do I get CRA credit for loans made from the point of investment forward only?

Margaret Lehr: Yes. You would receive a proportionate share of the total from a point in time. You would need details from the CDFI to determine this.

Please explain how I can get double CRA credit.

Malloy Harris: You can get positive consideration for an investment as an investment or as an investment and loan, but the percentage of consideration you receive for each is based on your percentage of the total capitalization of the CDFI. You have to make a choice-either you receive 100% of your investment or a portion of your investment and a percentage of the loans made by the CDFI. This is not really double counting.

How do you define equity investments?

Malloy Harris: As an investment in an entity's capital-by purchasing a share, like stock.

Margaret Lehr: Since nonprofits cannot issue stock, this is a way to do the same thing.

Mike Pitchford: You receive a loan document, effectively.

Malloy Harris: What may be confusing is that the OCC used to say a national bank could invest or take debt as an "other asset." Now you must designate it as either a loan or an investment. This is according to GAAP.

If I invest $1.0 million in ACCION, which is in my assessment area, then can I count the $1.0 million investment and a pro rata share of the loans they make?

Malloy Harris: No. For consideration under both the lending and investment tests, a portion of the $1.0 million would be considered under the investment test and a portion of the pro rata share of loans would be considered.

So, if I am a 10% investor and ACCION makes $500,000 in loans, can I count $50,000 in loans?

Margaret Lehr: You would split it and count $500,000 for investment and claim the balance according to your proportionate share.

Malloy Harris: See OCC letter for clarification.

V. Community Development Venture Capital Funds

Are venture funds good investments for banks?

Bob Taylor: Wells Fargo has been involved in this area through an organization in Los Angeles called FAME Renaissance. Wells Fargo is also involved in small business lending, including small business loan products. The key is that patient capital is needed. This is a relatively new area for the bank, so I don't have any return information.

Fixed Income Securities

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What are the red flags safety and soundness examiners look for when examining a bank's investment portfolio?

Joseph Cilia: Basically, examiners play a consultative role. They discuss the investment portfolio with senior management, traders, and others to make sure there is an understanding within the bank of the risk of their products and their wherewithal to invest in these vehicles. They try to determine other factors such as hedging vs. speculation, sound portfolio building strategies, attempts to reach for yield irrespective of risk, and the bank's relationship with the street. They may assess whether the bank deals with more than one firm for information and evaluation purposes. If the bank deals only with one firm, they may try to determine why and why this one firm is enough. Also, mortgage backed securities have prepayment options that need to be assessed. Examiners will try to determine if an institution is prepared to analyze these options or to rely on someone they trust from outside. We used to disallow certain mortgage-backed securities, but that's been scrapped. Now these are evaluated on an overall portfolio basis.

How can bankers be sure their municipal and mortgage-backed securities qualify?

Glenn Loney: In rewriting the CRA regulation, we considered that the statute only mentions credit and its location. So we considered investments as alternatives to credit. There are, however, constraints presented by the regulation that limit what is considered as "qualifying." For example, you may wonder why any old municipal bond doesn't count. If you walk away from a community development concept, then just about any investment would qualify. The revision stayed focused on investments that met what the law intended to accomplish.

Bankers want to know how much of an investment will count. They must remember this is not based on a formula. Examiners are expected to exercise qualitative judgment. This qualitative judgment is intended to address concerns that simply investing lots of dollars would give CRA credit. Innovation is a qualitative factor. And churning is a big issue—and perhaps one that hasn't been completely dealt with yet.

We're also asked about the value of securitized subprime loans. We still need to deal with this since there probably is some justification for higher-priced loans where none will otherwise be made. We need to look into this.

So how much is enough?

Glenn Loney: There is no set figure-this may turn on what opportunities are out there-and will be different for different types of organizations. Banks may need to make their own pitch for what is the right amount. The number isn't the only question either. There are qualitative considerations also, not just quantitative ones.

Municipal bonds that qualify under the definition of CD-what are they, where do you find them, how do you make sure they qualify?

Roan Blacker: Taxable bonds have become important in allowing municipalities to finance affordable housing. There is a focus on single- and multi-family housing bonds, although there are bonds for other types of facilities. Single-family bonds are basically blind pool issuances where the proceeds are placed in pools and then lent to qualifying borrowers. In this case, an entire state is deemed to be the area that is served. If your assessment area is in the state, then you qualify. Multi-family projects are not pooled, and so each is identified and the breakdown of income levels of renters is stated. It is important to note that the Internal Revenue Service defines low- and moderate-income differently then we do for CRA purposes. The IRS goes up to 120% of median family income.

These bonds qualify for CRA if you look deeply. They will often have AAA ratings and good returns of all durations. How to locate them is key since to date there is no coordinated forward calendar of these investments. Once you identify your assessment area, go to your state housing finance agency and ask them to help carve out particular investments for you. You can also go to county redevelopment agencies and ask for their help in meeting housing needs in the area. The American Home Ownership Foundation is putting CRAinvestments.org on-line to provide users with a way to click on areas seeking credits. The site will show 6-9 months of planned investments.

How knowledgeable are state housing people about CRA?

Roan Blacker: State housing finance agencies are increasingly familiar with the CRA since some have looked at CRA-eligible borrowers served by statewide housing programs with an eye to the CRA-related definition of low- and moderate-income people or census tracts. So there is a record of what qualifies.

David Zwick: In order to protect yourself, and because of the inconsistent definitions, you may want to buy existing issues and ask the housing agency to whom they've actually lent money. Most municipal bonds that qualify should be taxable since not all tax-free bonds are bank-qualified, although they may be CRA-eligible.

How does one determine what is bank-qualified?

David Zwick: Most bond deals are described as bank-qualified. They are limited to a certain amount of issuance and deal size is limited. It is highly unlikely that there will be any tax-exempt, bank- and CRA-qualified investments. Read the marketing materials carefully to determine.

How do mortgage-backed securities work and where do you find them?

David Zwick: There are two types of mortgage-backed securities (MBSs): single-family and multifamily. Single-family targeted MBSs are the more common. An example is when banks deliver conforming loan production to Fannie Mae. To be targeted, loans are singled out that are to low- and moderate-income people or in low- and moderate-income census tracts. Those securities are then pooled for a particular institution. Fannie Mae and Countrywide are examples of where to purchase these. Note that a lot of documentation is needed for the regulators—as much information as is on the original loan tape, if possible. If you're willing to pay a premium, these types of investments are easy to find, but you'll pay as much as 3/4 to 2 points per million dollars, and this can add up. If you're willing to do more work in ferreting out originators in your area, there will be little or no premium. CRA Fund Advisors does this.

With forward commitment sales, when can CRA qualification be recognized?

David Zwick: Recognition is when a binding commitment is made to purchase, assuming the information about targets is clear.

Glenn Loney: This depends on your accounting practice. If you're investing and the funds flow out, the accounting practice will prevail. The new FFIEC Q&A addresses this.

Comment from audience: Most banks will account on a trade basis-when the commitment is made (whether cost or market), and this is known as "trade day treatment." Issues are similar to how derivatives are handled for safety and soundness, when the trade is executed. It seems that there are differences among institutions, so that's why we deferred to accounting practice.

If a housing agency sells bonds targeting people with incomes that are less than 80% of median, will investors that buy the bonds get credit for the year they buy the bond only?

Glenn Loney: That's the accounting issue. Clearly, you don't want a situation where someone buys a bond and gets the same amount of consideration as in the first year. The examination procedures say the examiner shall consider those made since the last examination and may consider those held in portfolio by making make judgments about how much credit to give. There's no formula for that.

What experience do banks have in finding these types of investments?

Bob Taylor: We started at the board level and made the decision to be in this business. Our chief financial officer and asset-liability committee the make an annual allocation. Also, our performance context includes demand for these products. We use a portfolio approach to ensure there's not only one type of investment and we make sure fixed income securities are a large component. The bulk of the portfolio is very predictable (not so innovative) and this is important to ensure return and predictability of the portfolio's performance. We need to convince the treasury group internally about what we want to purchase that falls outside these parameters and also must document and monitor these things. We receive monthly reporting on the portfolio and put together an annual report on investments. If reporting is not adequate or in place for a particular investment, then the bank doesn't make the investment.

David Zwick: We reviewed 400-500 public evaluations to answer questions like how much is enough, how fast should investments turn, and how much credit is received each year. We noticed there is a significant discount each year, by the way. Documentation is the key and it must be heavy. Don't invest if you don't get the paperwork. Remember that there aren't many investment firms who know what they're doing with CRA. The lion's share of your investment should be in secure, fixed income securities. CRA investments don't have to be low quality.

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