

Community Investments Vol. 11, Issue 2 Letters to Community Investments

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Each week, Community Affairs staff receive technical questions related to the application and interpretation of the CRA and Fair Lending regulations. The following are recent questions whose answers we thought would be useful to you.

Keep your questions and comments coming! You can fax them to us at (415) 393-1920.

CRA Questions

Q. What percentage of my portfolio must be in qualified investments to receive an outstanding rating?

CI: There are no established benchmarks that indicate what level of investments is considered "outstanding." The performance context, the nature of the investments, and the impact of these investments all contribute to the assessment of investments. You may want to read the public evaluations of your peer institutions to get an idea of what has been acceptable to regulators in the past.

Q: How do examiners determine which loans to consider when performing a small bank CRA examination?

CI: Examiners look at major product types by both the number and dollar amount of loans extended. Usually this requires a review of small business loans and consumer credit. Generally, examiners will not analyze products that are not considered significant to the bank or are not indicated by the bank to be major product lines.

Q: Do I have to develop a written performance context?

CI: The CRA regulation does not require a bank to develop a performance context. Even so, a bank may be asked to respond to questions by examiners about lending penetration in specific areas, distribution of loans among various income levels, or conspicuous gaps in loan distribution. Verbal responses are generally acceptable, but bank representatives may want to consider written responses to ensure consistency throughout the bank.

Q: Our bank is considering offering HUD's 184 Loan Guarantee Program to address housing needs on reservations. Will the bank receive the same amount of CRA consideration for these loans as for loans that are not guaranteed?

CI: Yes. The lending test does not take into account whether or not loans are guaranteed.

Q: Does our bank need to get approval from our regulator before we make a community development investment?

CI: Not necessarily. According to Regulation H, you merely need to send your regulator notice of community development and public welfare investments made. However, the following exceptions apply: 1) if the aggregate investment exceeds five percent of capital stock and surplus, 2) if your bank's CAMELS and/or consumer compliance ratings are rated "three"

or below, 3) if your bank is not adequately capitalized, or 4) if your bank is subject to an enforcement action. Under these conditions, you will need to seek approval before making an investment.

Fair Lending Questions

Q: We are concerned about competitive loan pricing. How can our bank mitigate the fair lending risks associated with this business practice?

CI: Examiners are aware that the market drives loan pricing, and banks have the discretion to price loans based on a number of factors, including market competition. However, pricing is considered a bank policy issue, and departures from policy should be clearly documented in the files as an "exception to policy." In addition, it is wise (though not required) to track the number of and reasons for these exceptions to avoid fair lending and safety and soundness problems.

Q: If discriminatory loans are identified, what corrective actions can and should be taken?

CI: There are three steps a bank should take:

1) make the affected applicant "whole." That is, bring the applicant to the level that would have applied if he/she had not been discriminated against. This might include adjusting loan terms or re-evaluating a credit decision, 2) identify and correct the policy, procedure or staff-training issue that led to the problem, and 3) monitor periodically to ensure that the correction is fully effective.

Q: Is it a problem to limit our bank's second review program to minority applicants and/or those considered to be low-or moderate-income applicants?

CI: Banks should not limit second review programs to protected classes. Regulation B prohibits institutions from discriminating against applicants on a prohibited basis regarding any aspect of a credit transaction. Thus, limiting a second review program on the basis of race or gender, for example, could be construed as illegal discrimination. A policy of reviewing applications from low-and moderate-income individuals would not be considered discriminatory since income level is not a protected class under the FHA or ECOA.

Financial institutions not supervised by the Federal Reserve are encouraged to verify this information with their regulatory agency.