

GOOD NEWS IN UPDATED CRA Q & A

New Q & A expands community development loan eligibility

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I'm not sure where the regulators found the time, but they've released an update to the Community Reinvestment Act Q&A. On March 11, the Comptroller's Office, FDIC, the Federal Reserve, and the Office of Thrift Supervision issued an update to the CRA Questions and Answers.

Not an extensive update, by any means. In fact, there is only one new question and answer, plus two questions and answers that are revised. But, there is some good news involved.

Probably the best news in the CRA update is the revised question relating to the meaning of "primary purpose" for a community development loan.

One of the requirements for a loan to be considered a community development loan under the regulations is that the primary purpose of the loan must be for community development.

Under the previous, very strict, interpretation, if the primary purpose of the loan was for community development purposes, the entire loan could be considered a community development loan. But, if the loan did not have as its primary purpose community development, then the entire loan was excluded.

The revised Q&A (numbered as _____.12(h)-8*) opens up a new world of community development loans that was previously ignored, involving mixed-income housing projects with an affordable housing component. Under the revised Q&A, lenders would be allowed to treat as community development a pro-rata portion of any housing project that provides some affordable housing. If, for example, a lender makes a loan to finance a new housing development project that includes 20% low-to-moderate income units, the lender may designate 20% of that loan as a community development loan. It is no longer required for the housing project to have more than 50% of its units designated for low-to-moderate income individuals in order for any portion of the loan to be considered a community development loan. However, the old option also remains in that if the majority of the dollars or beneficiaries of the activity (subject of the loan) is for community development purposes, the entire loan is treated as a community development loan. The new alternative provides another avenue of community development lending in the specific arena of mixed-income housing projects.

Nor does the low-to-moderate income portion of the housing project necessarily have to be a government-mandated set-aside. As originally proposed, the Q&A would have dictated that the low-to-moderate income portion of housing units be required by a local, state or federal government entity. That requirement was removed in the final version of the Q&A.

The new pro-rata treatment for mixed-income housing community development loans does not extend to other types of lending. It only applies to affordable housing and not to other types of loans or investments.

At least not yet.

Here's something to put on your to-do list.

Identify other examples of loans and investments that could benefit from the same pro-rata treatment. Then send a letter to your regulator urging them to consider this change in the future.

The supplemental information to the Q&A says that the regulators will "keep abreast of developments in other types of community development activities" and will consider applying the same treatment to other types of community development activities.

Let's help them do that by providing real-life examples of how communities will benefit.

And let us know, below in the comment boxes, if this new Q&A issuance has impacted your CRA program in any way.

* What does this odd numbering scheme represent? Here is the explanation, taken verbatim from the Federal Register:

* "The Interagency Questions and Answers are grouped by the provision of the CRA regulations that they discuss, are presented in the same order as the regulatory provisions, and employ an abbreviated method of citing to the regulations. For example, the small bank performance standards for national banks appear at 12 CFR 25.26; for Federal Reserve System member banks supervised by the Board, they appear at 12 CFR 228.26; for state nonmember banks, they appear at 12 CFR 345.26; and for thrifts, the small savings association performance standards appear at 12 CFR 563e.26. Accordingly, the citation would be to 12 CFR _____.26. Each Q&A is numbered using a system that consists of the regulatory citation and a number, connected by a dash. For example, the first Q&A addressing 12 CFR _____.26 would be identified as § _____.26-1."

About Nancy Derr-Castiglione

"Lucy and Nancy's Common Sense Compliance" is blogged by both Lucy Griffin and Nancy Derr-Castiglione, both ABA Banking Journal contributing editors on compliance.

Nancy, a Certified Regulatory Compliance Manager, is owner of D-C Compliance Services, an independent regulatory compliance consulting services business that has provided expertise in compliance training, monitoring, risk assessment, and policies and procedures to financial institutions since 2002.

Previously, Nancy held compliance positions with Bank One Corporation and with United Banks of Colorado.

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