

PPM 5000-43

Section: Bank Supervision**Subject: Impact of Evidence of Discriminatory or
Other Illegal Credit Practices on
Community Reinvestment Act Ratings**

To: Department and Division Heads, District Counsels, and All Examining Personnel**Purpose and Scope**

This Policies and Procedures Manual (PPM) issuance outlines the policy and framework for determining the effect of evidence of discriminatory or other illegal credit practices on the Community Reinvestment Act (CRA) evaluation and assigned rating of national banks, federal savings associations, and federal branches.

This PPM applies to the CRA performance evaluation (PE) of all banks examined by the Office of the Comptroller of the Currency (OCC), outlines the OCC's policy, and provides guidance to examiners. This PPM is not intended to, and does not, create rights, substantive or procedural, enforceable at law or in any administrative proceeding.

Introduction

In enacting the CRA, Congress sought to encourage certain financial institutions, including most national banks, federal savings associations, and insured federal branches¹ (collectively, "banks"), to help meet the credit needs of local communities where they are chartered. The statute provides for each appropriate federal financial supervisory agency to use its authority when examining financial institutions to encourage such institutions to help meet the credit needs of the local communities, including low- and moderate-income areas, in which they are chartered consistent with the safe and sound operation of such institutions.²

The OCC's implementing regulations, 12 CFR 25 (for national banks) and 12 CFR 195 (for federal savings associations), provide that the OCC will assess bank performance in helping to meet community credit needs consistent with safe and sound operations.³ This assessment generally includes an evaluation of the bank's record of helping to meet the credit needs of its assessment area(s) through its lending activities.⁴ The CRA regulations also provide that "[t]he

¹ 12 CFR 25.11(c) and 195.11(c).

² 12 USC 2901, 2903.

³ 12 CFR 25.11(b)(1) and 12 CFR 195.11(b)(1).

⁴ 12 CFR 25.21-25.27 and 12 CFR 195.21-195.27.

OCC's evaluation of a bank's CRA performance is adversely affected by evidence of discriminatory or other illegal credit practices in any geography by the bank or in any assessment area by any affiliate whose loans have been considered as part of the bank's lending performance."⁵ Therefore, in assigning a CRA rating, the OCC first evaluates a bank's performance for the applicable time period under the regulatory performance criteria and then makes any adjustments that are warranted based on evidence of discriminatory or other illegal credit practices.⁶

The CRA regulations⁷ provide the OCC with discretion to determine how a bank's CRA evaluation and rating are adversely affected by evidence of discriminatory or other illegal credit practices in the institution's CRA lending activities. The regulation states that in determining the effect of evidence of discriminatory or illegal credit practices in a bank's CRA lending activities on the bank's evaluation and assigned CRA rating, the OCC considers the following factors (the regulatory factors):

- the nature, extent, and strength of the evidence of the practices;
- the policies and procedures that the bank (or affiliate, as applicable) has in place to prevent the practices;
- any corrective action that the bank (or affiliate, as applicable) has taken or has committed to take, including voluntary corrective action resulting from self-assessment; and
- any other relevant information.⁸

Effect of Discriminatory or Other Illegal Credit Practices on CRA Ratings

As directed by the CRA, the OCC's general policy is to use the evaluation of CRA performance as a tool to achieve the underlying purpose of the CRA: to encourage banks to help meet credit needs by lending, serving, and investing in the communities in which they operate, across income levels and geographies. This policy informs how examiners should determine the adverse effect of evidence of discriminatory or other illegal credit practices in a bank's CRA lending activities has on a bank's CRA evaluation, including whether a downgrade of the composite rating, and/or component performance test rating, is appropriate. In each case, the OCC determines the adverse effect of the evidence under the relevant facts and circumstances,

⁵ 12 CFR 25.28(c); 12 CFR 195.28(c). In connection with any type of lending activity described in 12 CFR 25.22(a) or 195.22(a), evidence of discriminatory or other credit practices that violate an applicable law, rule, or regulation includes, but is not limited to, evidence of violations of the Equal Credit Opportunity Act, Fair Housing Act, Home Ownership and Equity Protection Act, section 5 of the Federal Trade Commission Act, section 8 of the Real Estate Settlement Procedures Act, and the provision of the Truth in Lending Act regarding a consumer's right of rescission. OCC policy also provides for the consideration of evidence of violations of the Servicemembers Civil Relief Act and Military Lending Act in determining a bank's CRA rating.

⁶ 12 CFR 25, Appendix A, "Ratings."

⁷ The Federal Deposit Insurance Corporation and Board of Governors of the Federal Reserve System have implemented CRA regulations that are separate from, but consistent with, the OCC's CRA regulations.

⁸ 12 CFR 25.28(c)(2) and 12 CFR 195.28(c)(2).

by applying the regulatory factors using the two principles discussed below and the OCC's supervisory judgment and experience.

The OCC's determination of how evidence of illegal credit practices in a bank's CRA lending activities affects a bank's assigned CRA rating(s) is guided by two principles:

- 1) *There must be a logical nexus between the assigned rating(s) and evidence of discriminatory or other illegal credit practices in the bank's CRA lending activities to ensure alignment between the rating(s) and the bank's actual CRA performance*

Pursuant to the regulation, the OCC's determination of the extent to which a CRA evaluation is adversely affected by evidence of discriminatory or other illegal credit practices is, in the first instance, based on the nature of such practices. Generally, the OCC considers lowering the composite or component performance test rating of a bank only if the evidence of discriminatory or illegal credit practices directly relates to the institution's CRA lending activities.⁹

Where there is evidence of discriminatory or other illegal credit practices directly related to a bank's CRA lending activities, OCC examiners assess the extent and strength of such evidence to determine whether it is appropriate to lower the CRA composite and/or component rating of the bank. In making this assessment, OCC examiners consider a bank's actual CRA performance under the relevant performance tests for the bank, on the one hand, and the volume of customers harmed and the egregiousness of the discriminatory or other illegal credit practice(s) related to CRA lending activities, on the other hand. Thus, for example, limited, technical, or immaterial instances of discriminatory or illegal credit practices directly related to CRA lending activities in the context of otherwise good-to-excellent performance under each of the performance tests may be the basis for taking some action to reflect adverse effect on an evaluation such as criticizing the practice in the CRA PE.¹⁰ By comparison, more material instances of discriminatory or other illegal credit practices in the context of average-to-good performance may be the basis for lowering a component performance test rating by one level. A downgrade of the composite rating should be supported by strong quantitative and qualitative evidence of material instances of discriminatory or illegal credit practices directly related to CRA lending activities that have resulted in material harm to customers. If, after completing an evaluation of a bank's CRA performance, the OCC determines that a bank's composite or component rating will be lowered based on evidence of discriminatory or other illegal credit practices directly related to the bank's CRA lending activities, the OCC's general policy is to downgrade the rating by only one rating level unless such illegal practices are found to be particularly egregious.

⁹ CRA lending activities are the type of lending activities described in 12 CFR 25.22(a) or 195.22(a) that are considered as part of the evaluation of a bank's lending performance under the lending test.

¹⁰ Such actions would be in addition to other appropriate actions the OCC ordinarily would take when illegal or discriminatory credit practices are identified, including requiring restitution or taking enforcement actions as the OCC determines appropriate.

Tying a CRA rating downgrade to CRA lending activities ensures that banks continue to have an incentive to engage in CRA activities in the communities in which they operate, while also holding banks accountable for discriminatory or other illegal credit practices related to their CRA lending activities. This principle is consistent with a purpose of the CRA, which is to use the CRA rating and evaluation to encourage CRA activities and not to penalize a bank for compliance deficiencies, or illegal credit practices, unrelated to its CRA lending activities. Moreover, balancing a bank's performance under the relevant performance tests with consideration of the extent and materiality of discriminatory or other illegal credit practices directly related to the bank's CRA lending activities will ensure that the bank's CRA PE, including the assigned rating(s), reflects the bank's actual performance.

2) Full consideration is given to the remedial actions taken by the bank

The CRA regulations provide that in determining the adverse effect of evidence of discriminatory or other illegal credit practices, "the OCC considers . . . any corrective action that the bank has taken or has committed to take, including voluntary corrective action resulting from self-assessment."¹¹ While the CRA evaluation assesses a bank's past performance for a specific span of time, the regulation provides the OCC with discretion to assign CRA rating(s) in light of the bank's record of performance, including the status at the time OCC evaluates a bank's efforts to remediate previous lapses or deficiencies. Consistent with the purpose of the statute and the regulation, examiners fully consider the corrective actions taken by a bank regarding discriminatory or other illegal credit practices, including the cumulative impact of supervisory or enforcement actions taken against a bank, the progress to remediate the issues underlying such actions, and whether the actions are directly related to the bank's CRA activities and performance. Thus, as a general matter, if the bank has remediated or taken appropriate corrective actions to address the evidence of discriminatory or other illegal credit practices, the ratings of the bank should not be lowered solely based on the existence of the practice prior to commencement of the CRA evaluation. This principle is consistent with a purpose of the CRA regulations, which is to consider whether discriminatory or other illegal credit practices have been, or are substantially being, addressed by the bank. The OCC's policy is generally not to penalize a bank by lowering its CRA rating when examiners have determined the bank has taken appropriate remedial actions because penalties in such cases can unnecessarily distract and divert the bank's resources from lending, investing, or serving the relevant communities and thereby frustrate the CRA's purposes.

Assessing Adverse Effect of Discriminatory or Other Illegal Credit Practices

In assessing whether there is evidence of discriminatory or other illegal credit practices that may adversely affect the OCC's evaluation of a bank's CRA performance, the relevant Supervisory Office, in consultation with Compliance and Community Affairs and Community and Consumer Law, considers all of the factors in 12 CFR 25.28(c)(2) or 195.28(c)(2) to determine the effect of evidence of such practices in a manner consistent with the policies outlined in this PPM. Controls, testing or audit procedures that the bank has implemented, and restitution made to customers, may be mitigating considerations. For example, a lower rating may not be

¹¹ 12 CFR 25.28(c)(2) and 12 CFR 195.28(c)(2).

warranted if a bank self-identifies violations and voluntarily takes corrective actions in a timely manner.

When discriminatory or other illegal credit practices are identified, each such practice and the relevant potentially mitigating factors from 12 CFR 25.28(c)(2) or 195.28(c)(2) are described on the “Discriminatory or Other Illegal Credit Practices” page of the PE. If a rating is lowered, examiners must provide a full explanation in the PE as to why the discriminatory or other illegal credit practice(s) resulted in a lower rating. This explanation must include a description of how the policies contained in this PPM were applied. Examiners should also include a comment on the “CRA Rating Summary” page of the PE noting that discriminatory or other illegal credit practice(s) were identified and whether those practices resulted in a lower rating.

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