

RESCINDED

EC - 254



EXAMINING ISSUANCE

Comptroller of the Currency
Administrator of National Banks

Any attachments to this document are rescinded only as they relate to national banks and federal savings associations.

Type: Examining Circular

Subject: Treatment of Discrimination Issues in
CRA Performance Evaluations

TO: Deputy Comptrollers, Department and Division Heads and All Examining Personnel

This circular provides guidance on the proper treatment of discrimination issues in CRA Performance Evaluations. The FFIEC Consumer Compliance Task Force developed this guidance. Each of the supervisory agencies is disseminating this information.

The evaluation process for CRA Performance Category IV, Discrimination and Other Illegal Credit Practices, includes two assessment factors: (d) Any practices intended to discourage applications for types of credit set forth in the institution's CRA statement; and (f) Evidence of prohibited discriminatory and other illegal credit practices. Information presented under these factors should demonstrate the effect of the bank's performance on the overall rating, and its compliance with Regulations B and C, the Fair Housing Act, and the Fair Housing Home Loan Data System. The information should distinguish between substantive violations (i.e., those involving discrimination or discouragement on a prohibited basis) and technical or procedural violations.

Examiners should not discuss specific credit practices giving rise to comment under Performance Category IV in the Performance Evaluation. This discussion should be only in the examination report. The agencies consider this information confidential, because it could prejudice possible administrative actions.

The following examples demonstrate how this approach would be applied:

1. Technical or Procedural Violations

An examination may disclose technical and/or procedural violations of Regulation B, which do not result in the conclusion that illegal discrimination has occurred, but which are of supervisory concern and fall within this Performance Category.

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For example, examiners may find instances in which adverse action notices were sent to applicants, but which were sent outside of the timing requirements of the regulation or did not accurately state the reasons for the action. In this situation, the examiners might determine that the underlying cause was careless documentation and clerical oversight, rather than any pattern or individual instances of illegal discrimination. Such violations may still influence a CRA rating, especially if the practices were widespread, repeated from a previous examination, or considered along with other illegal credit practices.

The evaluation should identify, under assessment factor (c) the general law and regulation that were violated, the fact that the violations are procedural, the extent of the problem, and the responsiveness of management. This would be accomplished through statements such as: "We did not identify any credit practices inconsistent with the substantive provisions of the fair housing and fair lending laws and regulations. However, we noted isolated (limited/widespread) violations of technical aspects of the Equal Credit Opportunity Act's Regulation B. Management has devoted insufficient attention to correcting these violations, which were repeated from the previous examination."

2. Suspected Discrimination

Another possible scenario is presented when examiners have not cited a confirmed instance of discrimination in the compliance examination report, but have expressed suspicion or concern about certain policies or practices to the institution's management and board of directors.

Comments in the public section of the CRA Performance Evaluation should not describe or allude to "suspected," "apparent," or "possible" discrimination. Such situations involve matters that are speculative in nature and are not reflected in the CRA rating.

Comments should reflect only those violations which were actually cited in the examination report. In such cases, examiners should state in the Performance Evaluation that no violations of the substantive provisions of the fair housing and fair lending laws and regulations were identified. The occurrence of technical or procedural violations should be presented, as applicable and only in general terms, as described in Example 1. When examiners suspect, but are unable to conclude that discrimination has occurred, criticism related to policies, procedures, training programs and internal assessment efforts in support of nondiscrimination in lending, may still be appropriate under assessment factor (d).

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3. Substantive Violations

When illegal discrimination or discouragement has been confirmed, the evaluation should report that the institution was found to have violated substantive provisions of the Equal Credit Opportunity Act or the Fair Housing Act and/or other laws as applicable. The evaluation should identify the extent of the violations (i.e., widespread, limited to a particular office/division/subsidiary, or isolated), characterize management's responsiveness in acting upon the issue(s), and state that the matter is of significant supervisory concern. The presentation of adverse findings under both assessment factors (e) and (f) may be appropriate. Comments on management's response should be limited to the effectiveness of any action taken before the conclusion of the examination. The comments should not address potential, future corrective action by management.

The method of reporting violations, other deficiencies, and supervisory concerns in the examination report has not changed as a result of public disclosure requirements. Vigorous follow-up should continue to be used to ensure that corrective action has been taken. Appropriate enforcement tools should be used to secure compliance, including, where necessary, cease and desist orders and referrals to the U.S. Department of Justice.

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