

You have asked whether institutions that participate in one or more of these aspects of the []'s RLF program will receive favorable consideration under the CRA regulations. As explained more fully below, depending upon the circumstances, participation in various aspects of the RLF program may receive favorable consideration under the CRA regulations.

Discussion

I. Assessment under the CRA Regulations

The CRA regulations provide different methods for evaluating a financial institution's CRA performance depending on the size of the institution and its business strategy. Large retail institutions³ are evaluated under the lending, investment and service tests.⁴ The lending test evaluates an institution's lending performance by assessing, among other things, the distribution of small business loans that the institution makes in its assessment area(s).⁵ The investment test evaluates an institution's performance by assessing, among other things, the dollar amount, innovativeness or complexity, and responsiveness of the institution's qualified investments in its assessment area(s) or a broader statewide or regional area that includes its assessment area(s).⁶ The service test evaluates the institution's performance by assessing the availability and effectiveness of its systems for delivering retail banking services and the extent and innovativeness of its community development services in its assessment area(s) or a broader statewide or regional area that includes its assessment area(s).⁷

Small institutions generally are evaluated under the small institution performance standards,⁸ which focus on the institutions' lending activities in their assessment area(s),⁹ including loans to businesses of different sizes and community development loans, as appropriate.¹⁰ In

³ Large institutions have total assets of more than \$250 million or are affiliates of a holding company with \$1 billion or more in bank and thrift assets. Cf. 12 C.F.R. §§ 25.12(t), 228.12(t), 345.12(t) and 563e.12(s).

⁴ 12 C.F.R. §§ 25.21(a)(1), 228.21(a)(1), 345.21(a)(1) and 563e.21(a)(1).

⁵ 12 C.F.R. §§ 25.22(b), 228.22(b), 345.22(b) and 563e.22(b).

⁶ 12 C.F.R. §§ 25.23(b), 228.23(b), 345.23(b) and 563e.23(b).

⁷ 12 C.F.R. §§ 25.24, 228.24, 345.24 and 563e.24.

⁸ 12 C.F.R. §§ 25.21(a)(3), 228.21(a)(3), 345.21(a)(3), and 563e.21(a)(3).

⁹ 12 C.F.R. §§ 25.26(a), 228.26(a), 345.26(a) and 563e.26(a).

¹⁰ Small institutions also may elect to be evaluated under the lending, investment and service tests used for large retail institutions. 12 C.F.R. §§ 25.21(a)(3), 228.21(a)(3), 345.21(a)(3) and 563e.21(a)(3).

addition, a small institution's provision of qualified investments and community development services is considered to determine if the institution merits a rating of "outstanding."¹¹ Wholesale institutions (institutions that are not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers)¹² and limited purpose institutions (institutions that offer only a narrow product line--such as credit card or motor vehicle loans--to a regional or broader market)¹³ are evaluated under the community development test,¹⁴ which focuses on an institution's community development loans, qualified investments, and community development services that benefit its assessment area(s) or a broader statewide or regional area that includes its assessment area(s).¹⁵ In addition, any institution may be evaluated under a strategic plan¹⁶ which it prepares and for which it receives approval from its supervisory agency. The plan may address lending, investment, and services, as appropriate.¹⁷

II. Investments in the RLF Program

To the extent that the RLF program stabilizes or revitalizes low- or moderate-income areas, or promotes economic development by financing businesses that meet the size limits for Small Business Administration programs, investments in or grants to the program would be "qualified investments" and, therefore, receive favorable consideration under the CRA regulations. A qualified investment is an investment (including a grant) that has as its primary purpose community development.¹⁸ "Community development" includes, among other things, activities that promote "economic development" by financing businesses that meet the size specifications in regulations governing the SBA's small business investment

¹¹ See 12 C.F.R. pt. 25 app. A(d)(2), pt. 228 app. A(d)(2), pt 345 app. A(d)(2) and pt. 563e app. A(d)(2).

¹² 12 C.F.R. §§ 25.12(w), 228.21(w), 345.21(w) and 563e.21(v).

¹³ 12 C.F.R. §§ 25.12(o), 228.12(o), 345.12(o) and 563e.12(n).

¹⁴ 12 C.F.R. §§ 25.21(a)(2), 228.21(a)(2), 345.21(a)(2) and 563e.21(a)(2).

¹⁵ 12 C.F.R. §§ 25.25(c), 228.25(c), 345.25(c) and 563e.25(c).

¹⁶ 12 C.F.R. §§ 25.21(a)(4), 228.21(a)(4), 345.21(a)(4) and 563e.21(a)(4).

¹⁷ 12 C.F.R. §§ 25.27(f), 228.27(f), 345.25(f) and 563e.25(f).

¹⁸ 12 C.F.R. §§ 25.12(s), 228.12(s), 345.12(s) and 563e.12(r).

company and small business development company programs and activities that revitalize or stabilize low- or moderate-income geographies.¹⁹ Activities that promote “economic development” include activities that support permanent job creation, retention, and/or improvement for low- or moderate-income persons or finance businesses located in low- or moderate-income geographies.

Although the RLF program clearly seeks to finance small businesses and promote job creation, the program does not define the term “small business” or specify whether the jobs to be created under the program will be permanent jobs or whether they will be filled by low- or moderate-income persons. Nor does the program specify whether a business that receives assistance will be located in or stabilize or revitalize low- or moderate-income areas. Investment in the RLF program will receive favorable consideration as a qualified investment only to the extent that the program meets the requirements described above.

Under certain circumstances, institutions may receive favorable consideration under the CRA regulations for participating in loans under the RLF program. As described above, under the lending test, and small institution performance standards, institutions are evaluated based on, among other things, the distribution of small business loans within their assessment area(s).²⁰ Institutions may also include goals related to small business lending in their strategic plans.²¹ Small business loans are defined as loans that meet the definition of “loan to small business” in the instructions to the “Consolidated Reports of Conditions and Income” (Call Report) and “Thrift Financial Reports” (TFR).²² Essentially, loans to small businesses under the Call Report and TFR are commercial and industrial loans with original amounts of \$1 million or less and loans of this size that are secured by nonfarm nonresidential properties. See Call Report Instructions, Schedule RC-C, Part II.

You have indicated that RLF program will limit its loan participation to the lesser of 33% of the project cost or \$100,000. Thus, since the borrower must contribute 10% of the cost of the project, an institution’s loan participation in a project (at the remaining 57% of the project cost) would not exceed \$1 million. All of the RLF loans will be to businesses and will be secured by business property. Thus, some, if not all RLF loans would qualify as loans to small businesses for Call Report and TFR purposes. However, to receive

¹⁹ 12 C.F.R. §§ 25.12(h)(3) and (4), 228.12(h)(3) and (4), 345.12(h)(3) and (4), and 563e.12(g)(3) and (4).

²⁰ 12 C.F.R. §§ 25.22(b) and 25.26(a), 228.26(a) and 228.22(b), 345.22(b) and 345.26(a), and 563e.22(b) and 563e.26(a).

²¹ 12 C.F.R. §§ 25.27(f), 228.27(f), 345.25(f) and 563e.25(f).

²² 12 C.F.R. §§ 25.12(u), 228.12(u), 345.12(u), and 563e.12(t).

consideration in the distribution analyses under the CRA regulations, the loans must be made within the institution's assessment area(s).

As described above, institutions also receive favorable consideration under the CRA regulations for community development loans. If a particular loan does not meet the Call Report/TFR definition of a loan to a small business, or if the institution is a wholesale or limited purpose institution, an institution still may receive favorable consideration for a RLF loan if the loan is a community development loan. A "community development loan" is a loan that has as its primary purpose community development.²³ As noted above, community development includes activities that promote economic development by financing small businesses or that revitalize or stabilize low- or moderate-income geographies. As was the case with investment in the RLF program, it is not clear from the information you provided whether loans made under the RLF program would have as their primary purpose community development. To the extent they do, institutions would receive favorable consideration under the CRA regulations for participating in these loans.

IV. Service on the []'s Loan Selection Committee

If the primary purpose of the RLF is community development, an institution may receive favorable consideration under the CRA regulations for having a bank officer, as part of his or her regular duties, participate in the activities of the []'s loan selection committee as a community development service. A "community development service" is a service that: (1) has as its primary purpose community development; and (2) is related to the provision of financial services.²⁴ Providing financial services means providing services of the type generally provided by the financial services industry and includes service on a board that promotes credit availability.

Although it is unclear based on existing information whether membership on the []'s loan selection committee would constitute community development, serving on the []'s loan selection committee clearly would be related to the provision of financial services. Thus, if the RLF program primarily promotes community development, an institution would receive favorable consideration under the CRA regulations for providing employees to participate in the activities of the []'s loan section committee.

²³ 12 C.F.R. §§ 25.12(i), 228.12(i), 345.12(i), and 563e.12(h). It is possible that a loan may both qualify as a small business loan and have a primary purpose of community development, but, except for a wholesale or limited institution, an institution may not receive consideration under the CRA regulations for such a loan as a community development loan. In addition, except in the case of a wholesale or limited purpose institution, a community development loan must benefit the institution's assessment area(s) or a broader statewide or regional area that includes the assessment area(s). 12 C.F.R. §§ 25.12(i), 228(i), 345(i) and 563e(h).

²⁴ 12 C.F.R. §§ 25.12(j), 228.12(j), 345.12(j) and 563e.12(j).

I trust that this letter has been responsive to your inquiry. The financial supervisory agencies will consider incorporating this guidance into the formal written guidance on the new CRA regulations that is being developed by the staff of the agencies. If you have any further questions concerning this matter, please feel free to contact me or Yvonne McIntire of my staff at (202) 874-5750.

Sincerely,

/s/

Michael Bylsma
Acting Director
Community and Consumer Law Division
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