

**FDIC NEW YORK REGION REGULATORY TELECONFERENCE:
CRA – UNDERSTANDING COMMUNITY DEVELOPMENT**

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August 13, 2015 – Question and Answers

- 1) We are an ISB and have completed our first exam as such this year.

We need clarification on what is considered a Community Development (CD) loan. Regarding the CD aspect, we have a fairly clear understanding. It is the size restrictions regarding business revenue and loan size.

- a) I am unclear as to businesses with revenues over or under \$1 million and loan amounts over or under \$1 million.

Generally, loans under \$1 million are considered as small business loans under the lending test and are not CD. However, as an ISB, you have the flexibility to determine which commercial loans with original amounts less than or equal to \$1 million you would like removed from the lending test analysis and considered as part of the community development test. Such loans would then have to meet one of the community development categories to qualify. Commercial loans in excess of \$1 million could be considered for community development credit, provided they meet the primary purpose criteria. On the other hand, business revenues of under \$1 million is one of the standards used to meet business size eligibility for consideration of activities under the economic development purpose for community development. Please refer to Q&A 345.12(g)(3) and Q&A 345.12(h)-3 for further guidance.

- b) Are all SBA guaranteed loans and 504 program loans considered CD?

No. 504 program loans in excess of \$1 million dollars are considered community development loans. Other SBA guaranteed loans would have to meet one of the community development categories to qualify.

- c) Are all commercial loans secured by affordable housing with five or more units considered CD regardless of size?

No. However, if the property primarily provides affordable housing to LMI residents, the loan could be considered for community development. See Q&A 345.12(g)(10).

- d) Related to 3) above, is the CD loan portion prorated by the number of units with affordability restrictions vs. market rate units (mixed income development)?

If the majority of units provide affordable housing, full quantitative credit is given. If there is a specific portion of units with income restrictions set aside, for example for Section 8 housing, the bank would get credit for that set aside portion. Please see Q&A 345.12(h) - 8 for further information on pro-rating affordable housing loans.

- 2) a) In reviewing your slides – page 7 indicates size test includes entities that meet the size eligibility requirements of the SBA or have gross annual revenues of \$1 million or less. Will you explain specifically where the SBA size eligibility requirements can be found for both the SBDC and SBIC programs.

The size eligibility requirements can be found on the SBA's website www.sba.gov

- b) I have a loan that we are considering for CRA community development reporting and am questioning whether or not I am on the right tract with eligibility. It is a hotel that does not meet the eligibility requirements under SBDC, however I believe it does meet the net worth and income standards under SBIC. Would the below be a correct statement?

In order to qualify for community development the borrower must meet the size eligibility standards of one of the below:

- 1) The SBA Development Company – SBA Tables (average annual receipts or average employment of a firm); or
- 2) SBIC Programs (small business defined as those with less than 18.5 Million in tangible net worth AND average after-tax income for the preceding two years of less than 6.5 million OR, businesses qualifying as small under SBA); or
- 3) Have gross revenues of \$1 Million or less.

Yes. You can use the industry codes available on the SBA website to determine the SBDC size requirements. For SBIC programs, SBIC's must only invest in Small Businesses, which are defined as businesses with tangible net worth of less than \$19.5 million AND an average of \$6.5 million in net income over the previous two years at the time of investment. Gross revenues of \$1 million or less is also correct. Refer to Q&A 345.12(g)(3)-1.

Here is a link from the SBA website that has the SBIC requirements:

<https://www.sba.gov/content/sbic-program-overview>

- c) Also, how often do the SBIC eligibility requirements change?

Institutions are encouraged to reach out to the SBA to confirm the current eligibility requirements prior to beginning the SBIC application process.

- 3) We have 100's of community development activities to present. Do you expect support documentation for each activity which could amount to quite a few pages of documentation? Is there a better way to present CD activities in an exam?

The bank should research activities to determine if they meet one of the community development categories and be able to provide, upon request, sufficient information to support that conclusion. The information does not necessarily need to be retained in hard-copy, but must be readily obtainable for review by the examiners.

- 4) Would creating a special communication piece for the purpose of reaching out to former employees of a local industry that has recently closed in order to provide awareness of financial counseling or loan work out options/deferments qualify for CRA credit?

It is the actual provision of the service, not the announcement of the service that qualifies. Please refer to Q&A 345.12(i)-3 for examples of qualified community development services, including credit counseling activities and loan modification/foreclosure prevention programs.

- 5) Is it correct that MECA's are not HMDA reportable but reportable as Other Loans for CRA?

The Interagency CRA Q&As address this issue in Q&A 345.22(a)(2)- 3.

"In some states, MECAs, which are not considered loan refinancings because the existing loan obligations are not satisfied and replaced, are common. Although these transactions are not considered to be purchases or refinancings, as those terms have been interpreted under CRA, they do achieve the same results. A small, intermediate small, or large institution may present information about its MECA activities with respect to home mortgages to examiners for consideration under the lending test as "other loan data.""

While not HMDA-reportable, institutions may collect and maintain data concerning its MECA activities. The data entry software provided by the FFIEC provides this ability. However, as directed in the FFIEC's Guide to CRA Data Collection and Reporting (www.ffiec.gov/cra/), this information "should not be submitted for central reporting purposes."

- 6) Does the Junior Achievement program qualify as CRA community development when delivered to students in LMI schools?

Providing qualified services at schools in which the majority of students qualify for free or subsidized lunches can be considered CRA-eligible. Please refer to Q&A 345.12(g)(2) - 1 and Q&A 345.12(i) -3 for additional guidance.

- 7) Would a donation of a foreclosed property to an LMI housing non-profit, e.g. Habitat for Humanity, be CRA eligible donation?

Yes, such a donation would be CRA-eligible. The bank should obtain an appraisal for the property, so that the value of the property can be quantified for examination purposes. Refer to 345.12(t)(5).

- 8) Can we consider volunteer hours in building homes for Habitat for Humanity clients for example as eligible CRA community development?

No, qualified community development services must relate to the provision of financial or other technical expertise as a representative of the bank. Please refer to Q&A 345.12(i) - 1 for guidance on this issue.

- 9) Are donations to schools/student projection in non-LMI CTs considered CRA eligible if the school provides >50% free or subsidized lunches?

Donations to support qualified activities at schools in which the majority of students qualify for free or subsidized lunches can be considered CRA-eligible. Please refer to Q&A 345.12(g)(2) - 1 and Q&A 345.12(i) - 3 for additional guidance.