

**Decision of the
Supervision Appeals Review Committee**

In the Matter of * * *

Case No. 2017-01

After consideration of the timely filed written submissions of the parties, the record of this case, and following the July 21, 2017 oral presentation and deliberative meeting of the Committee, the Bank's appeal was granted. The Committee reversed the decision of the Director of the FDIC's Division of Depositor and Consumer Protection ("DCP") with respect to the Compliance rating and the Community Reinvestment Act ("CRA") rating assigned at the Bank's 2015 examination.

Following the examination of the Bank, which also included a fair lending review, DCP notified the Bank of its preliminary finding that the Bank may have discriminated on the basis of race through its failure to make residential loans available to prospective borrowers in majority-Black census tracts ("MBTs"), a practice referred to as "redlining." DCP later concluded that there was reason to believe the Bank had engaged in a pattern or practice of discrimination, and referred the matter to the United States Department of Justice pursuant to the Equal Credit Opportunity Act ("ECOA").¹

The Report of Examination, which was issued to the Bank in 2016, included DCP's determination that the Bank had violated ECOA and the Fair Housing Act by engaging in redlining during the time period from 2011 through 2014. This determination was based on a review of the Bank's branching and marketing policies as well as statistical analysis suggesting significant disparities in applications and originations in MBTs as compared with peer institutions. DCP lowered the Bank's CRA rating from "Satisfactory" to "Needs to Improve" due to the cited violations. DCP also assigned the Bank a Compliance rating of "3" based on these violations and related weaknesses in the Bank's compliance management system.

In evaluating the effect of fair lending violations on the Bank's CRA rating, the FDIC considers the nature, extent, and strength of the evidence of the violation, the policies and procedures that the Bank has in place to prevent the violation, and any corrective action that the Bank has taken or committed to take.²

In the Committee's view, the Bank raised significant concerns as to the fairness of DCP's peer comparison analysis in this case. More specifically, the Committee concluded that the Bank had asserted a reasonable, non-discriminatory explanation for the observed disparities in mortgage lending, and that DCP did not adequately investigate or address that assertion. The

¹ The Committee's review was limited to whether the assigned CRA and Compliance ratings were adequately supported, and the Committee made no findings with respect to the merits of the cited violations or the referral to the Department of Justice.

² See 12 C.F.R. § 345.28(c)(2).

Committee determined that in this regard, the downgrade of the CRA rating was not sufficiently supported.

The Committee also noted that DCP failed to identify a policy or practice of the Bank that caused the observed disparities in mortgage lending. In the Committee's view, DCP did not adequately respond to the Bank's argument that the majority of its mortgage loan applications were not referred through branches, or the argument that the Bank's advertising efforts and online presence and capabilities served to provide access to credit for customers in MBTs. This also supported the Bank's position the downgrade of the CRA rating should be reversed.

The Committee additionally considered corrective actions that the Bank had taken or committed to take during the examination period, including the addition of a branch located in an MBT, the opening of a loan production office near MBTs, the hiring of a dedicated Community Business Development Manager and additional loan officers, and revisions to the Bank's mortgage loan underwriting criteria. The Committee determined that the Bank's assigned CRA rating did not sufficiently reflect these actions, particularly in light of evidence indicating that the Bank's actions had resulted in increased mortgage lending activity in MBTs during the time period of the cited violations and thereafter.

For these reasons, the Committee determined that the downgrade of the Bank's CRA rating was not sufficiently supported by the record, and therefore reversed the downgrade of the Bank's CRA rating from "Satisfactory" to "Needs to Improve."

The Committee determined that the cited fair lending violations were the primary factor in the decision to assign the Bank a Compliance rating of "3." In the Committee's view, however, the assigned "3" Compliance rating did not reflect the Bank's conduct during the complete time frame of the examination. The cited fair lending violations only included a portion of this time period, and the Bank took significant actions during the examination period to increase mortgage lending in MBTs and address weaknesses in its compliance management system. The Committee therefore concluded that the downgrade of the Bank's Compliance rating from "2" to "3" should be reversed.

The Committee determined that the assigned CRA and Compliance ratings were not reasonably supported in light of the record. The Committee therefore granted the Bank's appeal, reversed the decision of the Director of DCP, and directed that the Bank's CRA and Compliance ratings be revised accordingly.

By direction of the Supervision Appeals Review Committee of the Federal Deposit Insurance Corporation.